

GAHC010193412025



2025:GAU-AS:15556

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : Bail Appln./2805/2025**

DR SANGEETA DUTTA  
W/O DR. WALLIUL ISLAM  
RESIDENT OF ROMA ENCLAVE,  
4TH FLOOR, FLAT NO. 4A, NEAR ARYA HOSPITAL, REHABARI  
GUWAHATI, P.S.PALTAN BAZAR, P.O. REHABARI, DIST. KAMRUP (M),  
ASSAM, PIN-781008.

VERSUS

THE STATE OF ASSAM AND ANR  
REP. BY THE SPECIAL PP, ASSAM

2:AKASH MANDAL (INFORMANT)  
COLONY BAZAR  
NEAR VIP HOTEL  
P.S. FATASHIL AMBARI  
GUWAHATI  
DIST. KAMRUP (M)  
ASSAM  
PHONE NO. 863819187

**Advocate for the Petitioner** : MR W R MEDHI, MR. N J DUTTA, S RAHMAN, MR A  
BASUMATARY, S I AHMED, MR P TALUKDAR, MR A V SINGH

**Advocate for the Respondent** : PP, ASSAM, MR A.K. HAJONG (FOR VICTIM), MR. S. K.  
CHAKMA (FOR VICTIM), MS. D GHOSH (FOR VICTIM), MR P BHARDWAJ (R-2), MR. D J KAPIL  
(R-2)

**BEFORE  
HONOURABLE MR. JUSTICE ANJAN MONI KALITA**

DATE OF HEARING : 13.11.2025  
DATE OF JUDGMENT : 18.11.2025

**JUDGMENT AND ORDER(CAV)**

Heard Mr. N J Dutta, learned counsel for the accused applicant. Also heard Mr. P S Lahkar, learned Additional Public Prosecutor, Assam for the State as well as Mr. D J Kapil, learned counsel for the respondent No. 2. Also heard Mr. S K Chakma, learned counsel for the victim.

**2.** This is an application under Section 483 of the BNSS, 2023, praying for grant of regular bail to the accused applicant, namely, **Dr. Sangeeta Dutta**, in connection with Paltan Bazar Police Station Case No. 193/2023 dated 05.05.2023 registered under Sections 307/325/341/34 IPC with added Sections 366(A)/367/368/376 of IPC read with Sections 75/80 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short JJ Act, 2015) further read with Section 6 of the POCSO Act, 2012, currently pending trial before the learned Additional Sessions Judge cum Special Judge (POCSO), Kamrup (Metro), Guwahati being Sessions (Special) Case No. 112/2023.

**3.** The facts as can be seen from the instant application are summarized herein below –

(i) An FIR was lodged against the accused applicant and two other co-accused persons before the Paltan Bazar Police Station on 05.05.2023 by one

Akash Mandal, alleging that a girl child aged about three years was badly tortured by her foster parents without mercy. It was alleged that the aforesaid foster parents used to tie her under the direct sunlight on the 5<sup>th</sup> floor of the building (terrace) in summer days like an animal without water and food with the intension to kill her. It was alleged that the minor girl was left without any water and food for the whole day under the direct sunlight which could have caused heat-stroke at any point of time resulting in her death. It was further alleged that as per the information of the neighbors, the aforesaid torture on the minor girl was going on for the last fifteen days and she got grievously hurt from the knots of the rope around her hands.

(ii) On receipt of the FIR, police registered a case under Sections 307/325/34/341 of IPC read with Section 75 of the J J Act, 2015.

(iii) Another FIR was lodged on 08.05.2023 against four persons including the accused applicant by the Investigating Officer which was registered and numbered as Paltan Bazar Police Station Case No. 201/2023 under Sections 307/341/325/366A/361/368/341 IPC read with Sections 6/17/21 of the POCSO Act further read with Sections 75/80 of JJ Act, 2015.

(iv) After investigation, police submitted a Charge-Sheet on 03.07.2023 being Charge-Sheet No. 140/2023 in connection with Paltan Bazar Police Station Case No. 193/2023 against the accused applicant and four other persons under the various provisions of law.

(v) The accused applicant was charge-sheeted under Sections 307/325/326/341/370(5)/506/465/466/468/471 IPC read with Sections 75/80/81 of the JJ Act, 2015 read with Section 6/17 of the POCSO Act, 2012, wherein she was arrayed as the accused No. 2.

(vi) After further investigation, the police filed another Charge-Sheet on 06.07.2023 being Charge-Sheet No. 151/2023 in connection with Paltan Bazar Police Station Case No. 201/2023 against the accused applicant and four other persons under Sections 307/341/325/366(A)/361/367/368/341 IPC read with Sections 6/17/21 of POCSO Act, 2012 read with Sections 75/80 of the Juvenile Justice Act, 2015, wherein the accused applicant was arrayed as accused No. 1.

(vii) Thereafter, two Supplementary Charge-Sheets were filed by the police on 17.01.2024 and 22.04.2024, wherein Section 326(A) was added and six more witnesses were added to the 68 witnesses as shown in the earlier Charge-Sheet.

(viii) Both the aforesaid Charge-Sheets along with the Supplementary Charge-Sheets were clubbed together and at present, it is being conducted as one trial being Sessions (Special) Case No. 112/2023.

(ix) After filing of the Charge-Sheets, on 24.06.2024, formal charges were framed against the accused applicant under Sections 326(A)/466/471/370(5) of IPC read with Sections 75/80/81 of JJ Act, 2015 read with Section 6 of the POCSO Act, 2012.

(x) During the investigation, the accused applicant was arrested on 07.05.2023. The husband of the accused applicant, namely, Dr. Walliul Islam and three other co-accused persons were also arrested along with the accused applicant.

(xi) The accused applicant was presented before the learned Judicial Magistrate First Class (JMFC), Kamrup (Metro), Guwahati on the same day of arrest, whereby the learned JMFC remanded the accused applicant to police custody till 20.05.2023 and thereafter, remanded the accused applicant to

judicial custody and since then for the last 2½ years, the accused applicant is behind the bars.

(xii) The accused applicant after spending a sufficient time inside the jail, preferred a bail application before the learned Trial Court, however, the same was rejected on 23.04.2024 by the learned Trial Court in Sessions (Special) Case No. 112/2023.

**4.** Mr. N J Dutta, learned counsel for the accused applicant submits that after framing of the charges against the accused applicant and other co-accused persons, the trial in the instant case, i.e., Sessions (Special) Case No. 112/2023 had commenced long time back and at present is at the evidence stage with the vital witnesses, i.e., the minor victims and the informant have already been duly examined and cross-examined. He submits that till the date of filing of the instant bail application, out of the 74 witnesses, only 15 witnesses have been examined. He submits that 59 more witnesses are yet to be examined and it seems that the trial will take a long time to examine the remaining witnesses and thereby, to complete the whole trial proceeding.

**5.** The learned counsel for the accused applicant submits that till date, three of the accused persons, i.e., accused No. 3 (Lakhi Ray) and accused No. 4 (Kabaya Kamenglam Nongrum) were released on bail on 20.05.2025 by the learned Trial Court, whereas the accused No. 1, i.e., Dr. Walliul Islam has been released on bail by a Co-ordinate Bench of this Court on 28.10.2025. Therefore, the learned counsel for the accused applicant submits that since the other prime accused, namely, Dr. Walliul Islam, who is the husband of the present accused applicant and has also been charged with the same charges standing on a similar footing, has been granted bail, taking the principle of parity into account,

the present accused applicant should also be granted bail at this stage.

**6.** Other than the principle of parity, the learned counsel for the accused applicant submits that there are clear violations of the mandates of Sections 50, 50A, 41B(b), 46(4) and 60A of the Cr.PC committed by the arresting authority while arresting the present accused applicant which go to the very root of the entire arrest proceeding making the same unsustainable in law.

**7.** The learned counsel for the accused applicant has taken this Court to the Notice under Section 50 of Cr.PC issued to the accused applicant which is annexed to the instant application. He submits that by the aforesaid notice, the accused applicant was only informed that she was arrested in connection with the mentioned case and that sufficient evidence was found against her and therefore, she was being forwarded to the Hon'ble Court for judicial custody. He submits that the contents of the Notice are insufficient and the statutory requirements of Section 50 Cr.PC are not complied with. He submits that no grounds of arrest could be seen from the aforesaid notice. Therefore, he submits that in view of the provisions of law as laid down in a catena of cases by the Hon'ble Apex Court, the contents of the Notice do not fulfil the criteria which make the arrest of the accused applicant illegal and unsustainable.

**8.** In this regard, the learned counsel referred to the cases of **Vihaan Kumar -Vs- State of Haryana and Anr.**, reported in **(2025) SCC OnLine SC 269**, **Prabir Purkayastha -Vs- State (NCT of Delhi)**, reported in **(2024) 8 SCC 254** as well as the case of **Mihir Rajesh Shah-Vs-State of Maharashtra and Anr.**, decided by the Hon'ble Apex Court on 06.11.2025 in **Criminal Appeal No. 2195/2025**. He submits that the ratios laid down by the Apex Court in these cases clearly hold the field and non-providing of grounds of arrest

to the arrested person is a ground for release of the arrested person on bail. He submits that the instant case not being an exception, the accused applicant should be enlarged on bail on that ground alone.

**9.** The learned counsel for the accused applicant submits that no notice under Section 50A of the Cr.PC was issued to her relatives or friends when she was arrested by the arresting authority. He submits that Section 50A of the Cr.PC mandates that while arresting an accused person, a Notice in writing must be given to the relatives or friends or such other person as may be disclosed or nominated by the arrested person while being arrested. But in the instant case, no such notice was given to any of those categories of persons. He, therefore, submits that in view of the principles of law as laid down in various cases by the Hon'ble Apex Court, including the case of **Vihaan Kumar** (Supra), the arresting authority has violated the mandatory provisions of law as enumerated under Section 50A of the Cr. PC, thereby making the arrest of the accused applicant illegal.

**10.** The learned counsel for the accused applicant referred to the Arrest Memo issued to the accused applicant and submits that the Arrest Memo was also not issued in accordance with the provisions of Section 41B(b)(i) of Cr.PC. He submits that the arrest memo does not contain any attestation by any member of the family of the accused applicant or by any respectable member of the locality where the arrest was made. Therefore, he submits that the mandate of Section 41B(b)(i) was not complied with by the arresting authority at the time of the arrest of the accused applicant. He submits that in non-compliance of the aforesaid Section, there is a clear violation of the Articles 21 and 22(1) of the

Constitution of India which curtailed the right to life and personal liberty of the accused applicant the guaranteed under those Articles of the Constitution of India.

**11.** The learned counsel for the accused applicant further referred to the provision of Section 46(4) of Cr.PC. In this connection, it may be relevant to reproduce herein below the provision of Section 46(4) of the Cr.PC, which reads as under –

“(4) Save in exceptional circumstances, no women shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made ”

In the aforesaid context, the learned counsel for the accused applicant submits that though the arresting authority has shown that the arrest of the accused applicant was made at 11:00 AM on 07.05.2023, but in fact, the accused applicant was arrested at 1:00 AM on the night of 06.05.2023 and thereafter, shown her to be arrested on 11:00 AM at Paltan Bazar Police Station. He submits that in terms of the aforesaid Section 46(4) of Cr.PC, the arrest of the accused applicant in the night without any prior permission from the Judicial Magistrate of First Class within whose local jurisdiction the offence was supposedly committed or arrest was made, is in total violation of the mandate of Section 46(4) of the Cr.PC, which vitiates the whole arrest proceeding by making it an illegal arrest.

**12.** While referring to Section 60A of the Cr.PC, which mandates that no arrest shall be made except in accordance with the provisions of Cr.PC or any other law for the time being in force providing for arrest, he submits that in the instant case while arresting the accused applicant, the mandate of 60A is apparently violated by the arresting authority which has been demonstrated in violation of the provisions of Section 50, 50A, 41B(b)(i) and 46(4) of the Cr.PC.

**13.** The learned counsel for the accused applicant pointed out another important aspect to be considered in the instant case, i.e., incarceration of the accused applicant for a long time pre and during the trial. He submits that the trial is not at all progressing at a reasonable speed, which could be made out from the facts that the FIR was lodged on 05.05.2023, charge-sheet was filed on 03.07.2023 and thereafter, charges were framed on 24.06.2024 and till the date of the filing of the instant application, only 15 witnesses were examined out of the total of 74 witnesses. He submits that the accused applicant is already behind the bars for more than 2½ years without the trial being progressing at reasonable speed and it seems that the trial will take a considerable amount of time for its completion. He, therefore, submits that in terms of various judicial pronouncements of the Hon'ble Apex Court which provided for discouraging long incarceration of an accused facing trial, in the instant case also, the accused applicant is languishing behind the bars for more than last 2½ years with very bleak chances of the trial being completed within a reasonable time.

**14.** In this connection, the learned counsel for the accused applicant has

referred to the recent order passed by the Hon'ble Apex Court in the case of **Rabi Prakash -Vs- the State of Odisha**, reported in **(2023) SCC OnLine SC 1109**, wherein the Hon'ble Apex Court directed the concerned petitioner therein to be released on bail as he was also in long incarceration.

**15.** In support of his argument of violation of Sections 50, 50A and 41B(b)(i) of the Cr.PC, the learned counsel for the accused applicant has referred to certain judicial pronouncements of this Court for consideration, which are not mentioned in this order as those pronouncements are primarily decided on the basis of the aforesaid case laws of the Hon'ble Apex Court which have been referred by the learned Counsel for the accused applicant.

**16.** On the other hand, Mr. PS Lahkar, learned Additional Public Prosecutor, Assam submits that as far as the ground of violation of Sections 50 and 50A of the CrPC is concerned, the same has been taken care of by the Hon'ble Apex Court in the case of **State of Karnataka -Vs- Sri DarshanEtc.**, reported in **(2025) SCC Online SC 1702**, wherein, he submits, the Hon'ble Apex Court has taken the view that if no prejudice is caused to the arrested person by the arrest and the arrested person was aware of the grounds of his/her arrest, the arrest cannot be termed as vitiated. He submits that in the instant case, the accused is an educated person and she was aware of her grounds of arrest and she had, in fact, immediately after her arrest, applied for her bail by engaging a learned counsel. Therefore, the facts clearly show that no prejudice was caused to the accused applicant by non-furnishing of the grounds of arrest in elaborated details under Sections 50 and 50A of the Cr.PC. He, therefore, submits that the mandates of Sections 50 and 50A of Cr.PC have actually been substantially complied as no prejudice could be shown by the accused applicant.

He further submits relying on the same case of **Sri DarshanEtc.** (Supra) that long incarceration of an accused person and a long list of witnesses which might take considerable period of time are not grounds for bail, particularly, when the offences are grave and heinous in nature.

**17.** The learned Adl. PP relying on the case of **Pankaj Bansal -Vs- Union of India and Ors.**, reported in **(2024) 7 SCC 576**, alternatively, submits that non-furnishing of grounds of arrest is not attracted in the instant case as the accused applicant was arrested on 07.05.2023, much prior to coming of the judgment of the Apex Court in **Pankaj Bansal** (Supra), wherein it was observed that from the date of the said judgment only, by using the word 'henceforth', the grounds of arrest were to be given to the accused person and not prior to the pronouncement of the judgment in **Pankaj Bansal** (Supra). He submits that as per the law laid down by the Apex Court in **Pankaj Bansal** (Supra), the mandate that the grounds of arrest are to be given to the arrested person, has become effective only after the aforesaid judgment and not prior to that. Therefore, in the instant case, since the accused person was arrested prior to the pronouncement of the judgment in **Pankaj Bansal** (Supra), the ratio of **Pankaj Bansal** (Supra) shall not be applicable in the instant case. He further submits that if his contention of non-applicability of **Pankaj Bansal** (Supra) in the instant case is not considered also, the details of the offence committed by the accused applicant were provided in the notice under Section 50 of Cr.PC and therefore, the accused applicant was well aware of her grounds of arrest and thereby, no prejudice was caused to the accused applicant in the instant case. Therefore, he submits that there is no violation of Section 50 of the Cr.PC in the instant case and therefore on that ground alone, the accused applicant should not be granted bail.

**18.** The learned APP while submitting that in the instant case, no prejudice has been caused to the accused applicant in her arrest, as she has been intimated by the arresting authority about her grounds of arrest, referred to the case of **State of Madhya Pradesh -Vs- Shobharam and Ors.**, reported in **AIR 1966 1910**, wherein the Hon'ble Apex Court laid emphasis on the aspect of informing the arrested person about his/her grounds of arrest. Therefore, he submits that what is important is the intimation of grounds of arrest to the arrested persons rather than taking a hyper technical view on non-compliance of the procedural aspect of Sections 50 and 50A of Cr.PC.

**19.** Mr. D J Kapil, the learned counsel for the Respondent No. 2 submits that he is in total agreement with the submissions made by the learned Adl.PP, Assam and he is adopting the same.

**20.** Mr. S K Chakma, the learned counsel has put appearance on behalf of the victim and has also adopted the arguments put forwarded by the learned Adl.PP, Assam.

**21.** This Court has heard the submissions made by the learned counsel appearing for the respective parties. This Court has also gone through the voluminous case records of the pending Trial as well as the materials placed before the Court on record.

**22.** As far as the contention of the learned counsel for the accused applicant about long incarceration of the accused applicant till date, this Court has observed that though the trial is going on a reasonable speed, 59 more witnesses are yet to be examined. This indicates that the trial will still require a considerable time to be completed. Admittedly, the accused applicant has already spent more than 2½ years inside the jail custody.

**23.** In this connection, in a case relating to NDPS Act and the embargo of Section 37 of the NDPS Act, the observation made by the Hon'ble Apex Court in the case of **Rabi Prakash** (Supra) is relevant, which states that the prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India. In such situation, the constitutional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act. In another case of **Mohd. Muslim @ Hussain -Vs- State (NCT of Delhi) (Criminal Appeal No. 943/2023)**, the Hon'ble Apex Court has observed that grant of bail on the grounds of undue delay in trial cannot be said to be fettered by Section 37 of NDPS Act, given the imperative of Section 436A of Cr.PC, which is applicable to the offences of NDPS Act. Similarly, in the case of **Sariful Islam @ Sarif -VS- State of West Bengal**, reported in **SLA (CrI.) No. 4173/2022**, the Hon'ble Apex Court granted bail to an accused who had undergone custody for a period of 1 year 6 months while trial was at a preliminary stage in a case relating to NDPS Act. In the case of **Raghubir Singh & Ors -Vs- State of Bihar**, reported in **1987 CrI.L.J 157**, the Hon'ble Apex Court has held that the constitutional position is now well settled that the right to speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Article 21 of the Constitution. As it is seen from the above mentioned cases, long incarceration is a ground for bail even in cases under NDPS Act, 1985 having the rigours of Section 37 of the same.

**24.** Taking into consideration the aforesaid cases decided by the Hon'ble Apex Court, it is apparently seen that the long incarceration, pending trial is not an event which is to be encouraged and in fact, the same is to be discouraged. In the instant case also, since the accused applicant has already spent more than

2½ years in judicial custody, the prolonged delay in start of the trial as well as the time that might be consumed for completion of the Trial is a factor that definitely comes for consideration in adjudication of a bail application and in this aspect, the accused applicant scores positively.

**25.** As far as the contention of non-compliance of Sections 50 and 50A of the Cr.PC is concerned, this Court has seen the notice issued to the accused applicant under Section 50 of Cr.PC, which is reproduced herein below –

*" Ref Paltanbazar P.S. Case No. 193/23 U/S 307/325/341/34 IPC R/W  
Sec 75 Juvenile Justice Act*

*To,*

*Smti. Sangita Dutta, Age- 47 yrs*

*W/O- Walliul Islam*

*R/O- Suhagpur*

*Near Arya Hospital,*

*P.S- Paltanbazar*

*Dist- Kamrup (M)*

*This is to inform you that you have been arrested in connection with the above referred case after sufficient evidences found against you and forwarded to the Hon'ble Court for judicial custody.*

*Signature of the Arrestee*

*I/ C of the case*

*Paltanbazar P.S".*

**26.** The aforesaid notice clearly reveals that no substantial grounds of arrest, as such, have been mentioned in the contents of the notice. The notice only

provides the information about arrest of the accused applicant in connection with the case detailed therein after finding sufficient evidence against the accused applicant and that the accused applicant was forwarded to the learned Court for judicial custody. This clearly shows that no grounds of arrest were substantively provided to the accused applicant in the aforesaid notice by the arresting authority and therefore, the same seems to be in clear violation of the mandates of the Section 50 of the Cr.PC as well as the ratio laid down in the above mentioned cases of **Prabir Purkayastha** (Supra), **Vihaan Kumar** (Supra), **Mihir Rajesh Shah** (Supra) and **Sri DarshanEtc.** (Supra).

**27.** It has been settled by the Hon'ble Apex Court that non-mentioning of the grounds of arrest immediately after the arrest vitiates the whole process of arrest of the accused person which goes to the root of the matter, whereby the right to life and personal liberty guaranteed under Articles 21 and 22 (1) of the Constitution of India is violated. The Hon'ble Apex Court has underscored that the failure to comply with the requirement of informing the grounds of arrest soon after arrest would render the arrest illegal. Therefore, violation of fundamental rights guaranteed under Articles 21 and 22(1) gives a strong cause or reason to the accused applicant to be enlarged on bail.

**28.** As for notice under Section 50A is concerned, this Court could not find any such notice on records which was issued to any of the accused applicant's friends, relatives or any other person as may be disclosed or nominated by the accused applicant for the purpose of giving such information. This clearly violates the mandates of Section 50A of Cr.PC as well as the law laid down by the Hon'ble apex Court in a catena of cases including the case of **Vihaan Kumar** (Supra). The legislative intent behind such provision is to ensure that

those in a position to act, i.e. secure legal representation, initiate the process for bail, are empowered to do so without any delay, thereby safeguarding the fundamental rights of the arrested person as provided in article 21 of the Constitution of India.

**29.** As far as the submission that there is a violation of Section 41B(b)(i) of Cr.PC in arresting of the accused applicant, is concerned, this Court has perused the Arrest Memo given to the accused applicant while she was being arrested. It is found that there is no attesting signature of any member of the family of the accused applicant or of any respectable member of the locality where the arrest was made.

**30.** In the case of **D K Basu -Vs- State of West Bengal** reported in **(1997) 1 SCC 416**, it has been clearly provided that it is desirable that the officer arresting the person should prepare a memo of arrest at the time of arrest in the presence of at least one witness, who may be a member of the family of the arrestee or a respectable person of the locality where the arrest is made. Therefore, it is seen that the mandates of the principle provided in the case of **D K Basu** (Supra), which has flown from Articles 21 and 22 (1) of the Constitution of India is to be strictly followed. However, in the instant case, apparently, the provisions under Section 41B(b)(i) have been completely violated, thereby, depriving the accused applicant of her fundamental rights guaranteed under Articles 21 and 22(1) of the Constitution of India.

**31.** In so far as the contention of the learned counsel for the accused applicant that there is a violation of Section 46(4) of the Cr.PC, this Court has gone through the Trial Court Records as well as the other materials brought on record. No such permission from any Judicial Magistrate of First Class having

jurisdiction was found in the records in terms of Section 46(4) Cr. PC. Though it has been stated in the Arrest Memo that the accused applicant was arrested at 11:00 AM at Paltan Bazar Police Station, an assertive submission has been made by the learned counsel for the accused applicant that, in fact, the accused applicant was arrested at 1:00 AM on 06.05.2023 and that she was, thereafter, kept in the Paltan Bazar Police Station until she was given the arrest memo at 11:00 AM. Therefore, he submits that her arrest cannot be shown to be at 11:00 AM at Paltan Bazar Police Station, rather her arrest was made at 1:00 AM on 06.05.2023. This assertive submission was not confronted by the learned Adl.PP, Assam in his submission. Therefore, if the time of arrest is to be taken at 1:00 AM on 06.05.2023 then the accused applicant was arrested during the night of 06.05.2023. The mandate of Section 46(4) of Cr.PC is that if a woman is to be arrested after sunset or before sunrise, then save in exceptional circumstances, where such exceptional circumstance exists, the woman police officer shall by making a written report, should obtain prior permission of the Judicial Magistrate of the First Class within whose local jurisdiction the offence is committed or the arrest is to be made. As stated before, neither any such prior permission from the Judicial Magistrate First Class was found in the records nor any such permission was submitted before this Court during the hearing. In absence of such permission from the Judicial Magistrate First Class, the arrest becomes illegal as the same is in violation of the statutory provision of Section 46(4) of the Cr.PC. This violation of the statutory provision, certainly gives the accused applicant to argue for a bail as the same has violated her fundamental right of life and liberty guaranteed under Articles 21 and 22(1) of the Constitution of India. In this connection, the Hon'ble Gauhati High Court in the case **Tanuja Roy -Vs- State of Assam and others**, reported in **2016 SCC**

**OnLine Gas 786** has already held that it is evident that only in exceptional circumstances, a woman can be arrested after sunset and before sunrise. Such an arrest has to be effected by a woman police officer by obtaining prior permission of the jurisdictional Judicial Magistrate of the First Class by submitting a written report. In the instant case, from the records, a clear violation of Section 46(4) of Cr.PC could be seen which makes the arrest of the accused applicant illegal and unsustainable under the law.

**32.** Non-compliance of the aforesaid Sections of 50, 50A, 46(4), 41B(b)(i) clearly violates the other statutory provision of Section 60A Cr.PC, which provides that for any arrest to be made, is to be made strictly in accordance with the provision of Cr.PC.

**33.** Now coming to the submission made by the learned Adl.PP, Assam and his reliance on the case of **Sri Darshan Etc.** (Supra), this Court is of the opinion that the Hon'ble Apex Court vide it's judicial pronouncement made in the case of **Mihir Rajesh Shah** (Supra), clarified that the grounds of arrest must be communicated in writing to the arrestee, otherwise, the arrest is in violation of the statutory provisions contained in the Cr.PC. The case also clarified that the grounds of arrest must be communicated in writing within a reasonable time and in any case, at least two hours prior to production of the arrestee for remand proceeding before the Magistrate. Therefore, the argument that has been forwarded by the learned Adl.PP, Assam that no prejudice has been caused to the accused applicant since she was intimated about the grounds of arrest will not have any sustainable value or force.

**34.** The other argument of the learned Adl.PP regarding the applicability of Section 50 of Cr.PC only after the pronouncement of the judgment of the

Hon'ble Apex Court as in the case of **Pankaj Bansal** (Supra) is not tenable as the provision of Section 50 is available in the Cr.PC even before the pronouncement of the judgment in the case of **Pankaj Bansal** (Supra) and the case of **Pankaj Bansal** (Supra) has been discussed by the Hon'ble Apex Court in many subsequent cases without holding anything like the interpretation sought to be given by the learned Adl.PP for the State of Assam.

**35.** In view of the aforesaid findings and conclusions arrived at by this Court as well as taking into consideration of the order dated 28.10.2025 passed in **Bail Application No. 2434/2025 (Dr. Walliul Islam-Vs-State of Assam and Anr.)** by a Co-ordinate Bench, this Court is of the considered opinion that a case has been made out by the accused applicant for her release on bail.

**36.** Accordingly, it is directed that the accused applicant, **Dr. Sangeeta Dutta**, shall be released on bail in connection with **Sessions (Special) Case No. 112/2023**, on furnishing a bail bond of **Rs. 1,00,000/-** (Rupees One Lakh) only, with two local sureties of the like amount (one of whom shall be a Government Servant residing within the State of Assam), to the satisfaction of the learned Trial Court, subject to the following conditions that –

(i) The accused applicant shall co-operate in the trial and shall appear before the trial court as and when required;

(ii) The accused applicant shall not try to get in touch either with the victim or the informant of the case at any point of time;

(iii) The accused applicant shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts from

the trial court pending against the accused applicant;

(iv) The accused applicant shall surrender her Passport, Adhar Card and PAN Card before the Trial Court, if the same are not surrendered till now;

(v) The accused applicant shall not go outside of the jurisdiction of the Trial Court, without prior intimation or without providing the details of her visiting place to the Trial Court; and

(vi) The accused applicant shall not misuse her liberty by indulging in any activities which may hamper or temper with the progress of the trial.

**37.** With the above observation and direction, this bail application stands disposed of.

**JUDGE**

**Comparing Assistant**