

GAHC010046762025



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

Case No. : Bail Appln./629/2025

SAKIB CHOUDHURY
S/O SAFIQUE CHOUDHURY,
RESIDENT OF HOUSE NO. 12, NEAR NEW MASJID PATH, GANDHI BASTI,
LALMATI, PS PALTAN BAZAR, GUWAHATI, DIST KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. N MAHAJAN, MR. D BORA, MR. P K DAS, MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 07.03.2025

- 1.** Heard Mr. B. K. Mahajan, the learned counsel for the petitioner. Also heard Mr. R. R. Kaushik, the learned Additional Public Prosecutor, appearing for the State of Assam.
- 2.** This application under Section 483 of BNSS, 2023 has been filed by the petitioner, namely, Sakib Choudhury, who has been detained behind the bars since 19.01.2025 in

connection with Mangaldai P.S. Case No. 14/2025.

3. The gist of accusation against the present petitioner is that on 18.01.2025, one Mr. T Pegu, S. I. of Police, lodged an FIR before the Officer-In-Charge of Mangaldai Police Station, *inter-alia*, alleging that an information was received regarding a gang of financial fraudsters taking shelter at K.P Residency, Mangaldai. Accordingly, a search was made and 4 (four) numbers of accused persons, including the present petitioner, were arrested therefrom. During the interrogation of the said accused persons, it was revealed that the accused persons were involved in financial fraud of bank accounts and they are operating all over India.
4. This is for the second time the petitioner has approached this Court seeking bail in connection with Mangaldai P.S. Case No. 14/2025. On an earlier occasion, his bail application was rejected by this Court by order dated 27.02.2025, passed in Bail Application No. 348/2025, after perusal of the case diary.
5. The learned counsel for the petitioner has submitted that an order of rejection of bail on an earlier occasion does not preclude this Court from considering the bail for the second time on some different considerations and if some separate grounds are taken for seeking bail. In support of his submission, the learned counsel for the petitioner has cited a ruling of the Apex Court in the case of "**Babu Singh and Others Vs. State of UP**" reported in **(1978) 1 SCC 579**.
6. Mr. B. K. Mahajan, the learned counsel for the petitioner has submitted that this time the petitioner is praying for bail on the ground that at the time of his arrest, his constitutional rights guaranteed under Article 22 (1) of the Constitution of India as well as statutory rights guaranteed under Section 47 of the BNSS, 2023 were violated and therefore, the arrest itself got vitiated and on that ground alone he is entitled to get bail.
7. The learned counsel for the petitioner has submitted that it is the constitutional right of the petitioner under Article 22 (1) of the Constitution of India to be informed about the grounds of his arrest as soon as he was arrested in connection with this case.
8. The learned counsel for the petitioner has submitted that it is the constitutional duty

of the arresting authority to inform the arrestee about the grounds of arrest which includes full particulars of an offence which is alleged against the petitioner as well as all such details in the hands of the Investigating Officer which necessitated the arrest of the petitioner. He submits that mere informing the petitioner about the case number and the penal provisions involved in the said case is not the compliance of the constitutional provision under Article 22(1) as well as statutory provision of Section 47 of the BNSS, 2023.

9. The learned counsel for the petitioner has submitted that as the constitutional rights guaranteed under Article 22(1) of the Constitution of India has been violated in this case, while arresting the present petitioner, it is the duty of the Court dealing with the bail application to release the petitioner on bail, as in such a case the arrest gets vitiated due to violation of the constitutional mandate of the Article 22(1) of the Constitution of India.
10. The learned counsel for the petitioner has submitted that in the notice served upon the petitioner under Section 47 of the BNSS, 2023, the only information provided was the case number of the police station case, in which arrest has been made, that is, the Mangaldai P.S. Case No. 14/2025 and the penal provisions involved in the case, that is, under Sections 318(2)/316 (4)/336(3)/340(2)/61(2) of BNS, 2023. No other information has been provided to the petitioner in the notice under Section 47 of the BNSS, 2023, which was served on him after his arrest.
11. The learned counsel for the petitioner has submitted that in the arrest-cum-inspection memo also, which was prepared after the arrest of the present petitioner, no ground of arrest has been stated. The learned counsel for the petitioner has submitted that the petitioner is, therefore, entitled to get bail as his arrest got vitiated due to non-compliance of constitutional mandate under Article 22 (1) of the Constitution of India as well as statutory requirement under Section 47 of the BNSS, 2023.
12. In support of his submission, the learned counsel for the petitioner has cited the following rulings of the Apex Court.

- i. ***Vihan Kumar Vs. State of Haryana and Another*** reported in

2025 SCC Online SC 269.

ii. ***Prabir Purkayastha Vs. State (NCT of Delhi)*** reported in **(2024) 8 SCC 254.**

iii. ***Directorate of Enforcement Vs. Subhash Sharma*** reported in **2025 SCC online SC 240.**

iv. ***Babu Singh Vs. State of Uttar Pradesh*** reported in **(1978) 1 SCC 579.**

- 13.** On the other hand, Mr. R. R. Kaushik, the learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that there are sufficient incriminating materials against the petitioner in the case diary. He has also produced the case diary of Mangaldai P.S. Case No. 14/2025.
- 14.** The learned Additional Public Prosecutor has submitted that since the petitioner's earlier bail application was rejected after perusal of the case diary, and as he did not raise any plea of violation of Article 22(1) of the Constitution of India in that application, he is now estopped from taking the same ground in this subsequent bail application.
- 15.** He has further submitted that the Investigating Officer orally informed the petitioner of the grounds of arrest at the time of his arrest. Therefore, he argues that the grounds raised by the petitioner in this bail application are not sustainable, and the petitioner is not entitled to bail at this stage. Accordingly, he pleads for the dismissal of the bail application.
- 16.** I have considered the submissions made by learned counsel for both sides and have gone through the case diary of Mangaldai P.S. Case No. 14/2025 as well as the rulings cited by learned counsel for the petitioner in support of his submissions.
- 17.** In the case of "***Babu Singh and Others Vs. State of UP***" (*Supra*), the Supreme Court of India has observed as follows:

"2. Briefly we will state the facts pertinent to the present petition and prayer and proceed thereafter to ratiocinate on the relevant criteria in considering the interlocutory

relief of bail. Right at the beginning, we must mention that, at an earlier stage, their application for bail was rejected by this Court on September 7, 1977. But an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different considerations. While we surely must set store by this circumstance, we cannot accede to the faint plea that we are barred from second consideration at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not over-turning an earlier negation. In this view, we entertain the application and evaluate the merits pro and con."

18. Though, the petitioner's earlier bail application, i.e., B.A. No. 348/25, was rejected on 27/02/2025 after perusal of the case diary, the instant bail application has been filed again on the ground of violation of his constitutional rights guaranteed under Article 22(1) of the Constitution of India.
19. In view of the observations made by the Apex Court in ***Babu Singh and Others Vs. State of U.P.*** (*supra*) which states that "an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different considerations", this Court is of the considered opinion that there is no bar on filing the instant bail application on the ground of violation of constitutional rights, of the petitioner, under Article 22(1) of the Constitution of India.
20. The fundamental rights guaranteed under Article 22(1) of the Constitution of India cannot be deemed to be waived; even if an accused person does not explicitly demand these rights, the State is bound to uphold the constitutional mandate.
21. On perusal of the case diary, it appears that the petitioner was arrested, in connection with Mangaldai P.S. Case No. 14/2025, at about 7.00 pm on 19.01.2025, and after he was arrested, the notice under Section 47 of the BNSS, 2023 was served on him.
22. A perusal of the aforesaid notice reveals that the only information provided therein was the case number of the police station case in which the arrest was made, i.e., Mangaldai P.S. Case No. 14/2025, along with the relevant penal provisions, namely, Sections 318(2)/316(4)/336(3)/340(2)/61(2)(b) of the BNS, 2023. No further details

were furnished to the petitioner in the notice issued under Section 47 of the BNSS, 2023, which was served upon him following his arrest.

23. Article 22 (1) of the Constitution of India provides as follows.

"(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

24. Section 47 of the BNSS, 2023 provides as follows:

*"47. (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.
(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf."*

25. A plain reading of the above constitutional and statutory provisions reveals that informing an arrestee of the grounds for his arrest is not only a statutory right but also a constitutional mandate, which the arresting authority is duty-bound to uphold.

26. The observations made by the Apex Court in the case of ***Prabir Purkayastha Vs. State (NCT of Delhi)*** (supra) are very relevant in this regard and same are reproduced here in below:

"28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the "grounds" of "arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.

29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive

detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.....

"21. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.

48. It may be reiterated at the cost of repetition that there is a significant difference in the phrase "reasons for arrest" and "grounds of arrest". The "reasons for arrest" as indicated in the arrest memo are purely formal parameters viz. to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the investigating officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the "grounds of arrest" would be required to contain all such details in hand of the investigating officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the "grounds of arrest" would invariably be personal to the accused and cannot be equated with the "reasons of arrest" which are general in nature.

- 27.** In the instant case except the fact that the petitioner was served with the notice under Section 47 of BNSS, 2023, the prosecution side has not been able to show anything to satisfy this Court that the grounds of arrest of the petitioner in this case

were communicated to him. As already discussed here in above, the notice under Section 47 of the BNSS, 2023 served on the present petitioner only contains the information regarding his arrest in connection with Mangaldai P.S. Case No. 14/2025 and the penal provisions involved in the case. Nothing else has been mentioned in the said notice.

28. The Apex Court, in the case of ***Vihan Kumar v. State of Haryana & Another*** (Supra), has categorically held that mere information about an arrest is distinct from the communication of the grounds for such arrest. Simply informing an individual of his arrest does not fulfill the constitutional and statutory requirement of providing the grounds of arrest to an arrestee.
29. In the present case, the notice, under Section 47 of the BNSS, served on the petitioner merely states that he has been arrested in connection with Mangaldai P.S. Case No. 14/2025, without disclosing the basic facts necessitating such arrest. This Court, therefore, finds that the petitioner was not informed of the grounds of his arrest, as required by law. The notice issued under Section 47 of the BNSS, 2023, is devoid of any such details, resulting in a clear violation of constitutional and statutory mandate rendering the arrest illegal and entitling the petitioner to bail.
30. In the case of ***Directorate of Enforcement Vs. Subhash Sharma*** (supra), the Apex Court has observed as follows: -

"8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution."
31. In view of the above discussion, the petitioner, namely, Sakib Choudhury, is allowed to go on bail of Rs. 50,000/- (Rupees fifty thousand only) with two sureties of like amount (one of whom should be a resident of the State of Assam) subject to the satisfaction of the learned Chief Judicial Magistrate, Darrang with the following conditions:

- i. That the petitioner shall cooperate in the investigation of the Mangaldai P.S. Case No. 14/2025;
- ii. That the petitioner shall appear before the Investigating Officer of the Mangaldai P.S. Case No. 14/2025 as and when so required by him for the sake of fair completion of the investigation;
- iii. That the petitioner 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 before the Investigating Officer;
- iv. That the petitioner shall provide his contact details including photocopies of his Aadhar Card or Driving License or PAN Card as well as Mobile Number, and other contact details to the Investigating Officer;
- v. That the petitioner shall not leave the jurisdiction of the Court of learned Chief Judicial Magistrate, Darrang without prior permission of said Court and when such leave is granted by the said Court the petitioner shall submit his leave address and contact details during such leave before the said Court; and
- vi. That the petitioner shall not commit any offence while on bail.

- 32.** Before parting with this case, this Court finds it necessary to highlight a concerning practice. While the Constitution requires that an arrestee be informed of the grounds of arrest as soon as possible, Section 47 of the BNSS, 2023, also mandates that any police officer or person making an arrest without a warrant must immediately provide full details of the offence or other grounds of arrest. However, this Court has observed that, although notices under Section 47 of the BNSS, 2023 are issued in almost all cases, they usually include only the police station case number and the applicable legal provisions, without elaborating on the grounds for the arrest. As a result, these notices serve merely as intimation of arrest rather than fulfilling the legal requirement of providing the actual grounds for it.
- 33.** As the State is bound to follow the constitutional mandate as well as the statutory provisions of law, it shall ensure that in the notices furnished to an arrestee under Section 47 of the BNSS, 2023 full particulars of the offence, in which the accused has been arrested as well as the basic facts which necessitated the arrest of the accused must be provided to him forthwith at the time of his arrest.
- 34.** In paragraph No. 20 of the judgment of the Apex Court, in the case of ***Vihan Kumar Vs. State of Haryana and Another (Supra)***, it is observed as follows:

"20. When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) has been made. The reason is that due to non-compliance, the arrest is rendered illegal; therefore, the arrestee cannot be remanded after the arrest is rendered illegal. It is the obligation of all the Courts to uphold the fundamental rights."

- 35.** When an arrested person is produced before a Judicial Magistrate, it is the Magistrate's duty to ascertain whether the requirements of Article 22(1) of the Constitution of India have been complied with. If there is any non-compliance with this constitutional mandate, the Magistrate cannot remand the accused to custody; the only option available in such a case is to grant bail.
- 36.** Let, a copy of this order be furnished to the Chief Secretary, Government of Assam, and the Director General of Police, Assam, to ensure that when exercising the power to arrest without a warrant, the police or any other authority issues a notice under Section 47 of the BNSS, 2023, or any other relevant provision of a special law (such as Section 52(1) of the NDPS Act, 1985). This notice, which must be served on the arrestee at the time of arrest, should clearly state the grounds of arrest, including the full particulars of the offence, the gist of the accusations, and the basic facts necessitating the arrest. Failure to comply with this requirement would render the arrest invalid due to non-compliance with the constitutional mandate.
- 37.** Additionally, a copy of this order shall be provided to the Director, Judicial Academy, Assam, to raise awareness among the Judicial Magistrates and other Judicial Officers handling remand proceedings. This will help ensure that they fulfill their constitutional duty by verifying compliance with Article 22 of the Constitution of India before ordering judicial or police custody of the arrested person.
- 38.** The Registrar (Judicial) of this Court shall ensure the furnishing of copies of this order to the authorities stated hereinabove, forthwith.

39. With the above observations, this bail application is disposed of.

JUDGE

Comparing Assistant