GAHC010166222026

2026:GAU-AS:15773

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

Case No. : Bail Appln./2286/2026

BIPUL BANIA ALIAS BAPU BANIA
S/O LT LAXMI KANTA BANIA ALIAS KUDU, R/O VILL JURAPUKHURI PAMGAON, PO SANKARDEV NAGAR, PS LANKA, DIST HOJAI, ASSAM, PIN 782442

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SRI INDRA BANIA
SON OF LATE PRABIN BANIA
VILL- KAKI 2 NO. TANGLA
P.O. LANKA DIST. HOJAI
ASSAM

PIN-782446

Advocate for the Petitioner : MR. N J DUTTA, MR A BASUMATARY

Advocate for the Respondent : PP, ASSAM, MS. N PODDAR, Amicus Curiae, R2

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : 15.10.2026

Heard Mr. N.J. Dutta, learned counsel, appearing on behalf of the accused-

applicant. Also heard Mr. M.P. Goswami, learned Addl. P.P., representing the State respondent as well as Ms. N. Poddar, learned Amicus Curiae, representing the respondent no. 2/informant.

2. This is an application filed under Section 483 of the BNSS, 2023, praying for grant of bail to the accused-applicant in connection with Kaki P.S. Case No. 20/2026, registered under Section 8 of POCSO Act, 2012.

3. An FIR was lodged on 13.05.2026 before the Officer In-charge Kaki Police Station by the informant, alleging that the accused-applicant touched her minor daughter on chest and tried to do disrespectful acts when she visited a neighbor's house on 10.05.2026 at around 3 PM.

4. On receiving the FIR, Police registered Kaki P.S. Case No. 20/2026, under the aforementioned Sections.

5. The accused-applicant was arrested on 13.05.2026 and since then, for the last 125 days, he has been behind bars.

6. Police, after investigation, has filed charge-sheet against the accused-applicant, wherein six (6) witnesses have been examined and the matter is pending for framing of charge.

7. The learned counsel appearing for the accused-applicant submits that the Sections under which the accused-applicant has been charged are Section 75(2) of BNS, and Section 10 of the POCSO Act. He submits that under Section 10, the maximum punishment is 7 years and therefore, notice under Section 35(3) of BNSS ought to have been issued to the accused-applicant in the instant case. He referred to the case of **Satender Kumar Antil Versus Central Bureau of Investigation & Anr., SLP (Crl.) No. 5191/2021**. He submits that in the aforesaid case of **Satender Kumar Antil (supra)**, it has been specifically laid down by the Hon’ble Supreme

Court that a notice under Section 35(3) is required to be issued in the event the offense involves punishment up to maximum imprisonment of 7 years. He further submits that, in fact, the FIR was lodged by the informant due to some quarrel between the informant and the accused-applicant. He submits that since the accused-applicant is in judicial custody for the last 125 days, taking into account the above facts as well as the non-compliance of Section 35(3) of BNSS, the accused-applicant should be enlarged on bail. He submits that the accused-applicant will cooperate with the trial in the instant case.

8. The learned Addl. PP, on the other hand, opposes the prayer of bail which is supported by the learned Amicus Curiae, representing the respondent no. 2.

9. TCR in the instant case has been received and the same is minutely perused.

10. On perusal of the TCR, it is seen that Section 35(3) notice has not been issued prior to the arrest of the accused-applicant. **11.** This Court has also considered the other facts involved in the instant case and the materials available in the TCR.

12. Taking into account the entire facts and materials available, this Court is of the considered opinion that the accused-applicant should be granted bail at this stage. Accordingly, it is directed that the accused-applicant shall be released on bail on furnishing a bail bond of Rs. 50,000/- (Fifty Thousand only) with one surety of like amount to the satisfaction of the learned Special Judge (POCSO), Hojai, Sankardev Nagar, subject to the following conditions:-

(1) That the accused-applicant shall appear before the Trial Court as and when required;

(2) That the accused-applicant shall not try to get in touch with the informant or victim on any ground whatsoever;

(3) That the accused-applicant shall not directly or indirectly, induce, threaten or influence any witness, or tamper with the evidence of the case.

13. In terms of the above directions, the instant bail application is disposed of as allowed.

JUDGE

Miriam Degu
(SPA)