GAHC010175462026

2026:GAU-AS:15741

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

Case No. : Bail Appln./2386/2026

SHIVA THAPA AND ANR
S/O CHANDRA BAHADUR THAPA
RESIDENT OF SADIYA 8 MILE
P.S. SADIYA, DIST. TINSUKIA, ASSAM.

2: PRABIN THAPA
S/O CHANDRA BAHADUR THAPA
RESIDENT OF SADIYA 8 MILE
P.S- SADIYA. DIST- TINSUKI

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:RAJU SONAR
VILL- JALONI G.T 15
DULIAJAN. P.O AND P.S DIBRUGARH
DIST DIBRUGARH
ASSA

Advocate for the Petitioner : MR. S ISLAM, MR. AAYAAZ TAUFIQ,A R MONDAL

Advocate for the Respondent : PP, ASSAM, MS ADRITA BHUYAN, Amicus Curiae, R2

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 14.10.2026

Heard Mr. S. Islam, learned counsel for the accused. Also heard Mr. B.

Sarma, learned Additional Public Prosecutor for the State respondent No. 1; and Ms. A. Bhuyan, learned Amicus Curiae for the respondent No. 2 appearing through VC mode.

2. This application, under Section 483, BNSS is preferred by two accused, namely, Shiva Thapa and Prabin Thapa, who have been languishing in jail hazot in connection with Duliajan P.S. Case No. 82/2026, under Sections 103(2)/3(5) of the BNS, added Section 127(2) of BNS, read with Section 6 of the POCSO Act, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Raju Sonar on 19.06.2026.

3.1. The essence of allegation, in the FIR, dated 19.06.2026, is that the youngest son of the informant, namely, Ankur Sonar (actual name withheld) was admitted at Naoholia De-Addiction-cum-Rehabilitation Centre, and on 18.06.2026, at night, the owner of the said centre, namely, Santosh Limbo and his employees, namely, Prabin Thapa, Shiva Thapa, Hemanta Sarma and Sanjib Sonar assaulted his son by means of iron rod and other weapons, and also dashed his head against the concrete wall and committed murder. Thereafter, they fled away with CCTV CPU hard disks.

4. Mr. Islam, learned counsel for the accused submits that the accused Shiva Thapa and Prabin Thapa were arrested on 21.06.2026 and 28.06.2026, respectively, and that charge-sheet had been put up before the learned trial Court only on 29.09.2026, and on that day, 90 days already expired, and as such, they are entitled to default bail, and therefore, Mr. Islam has contended to allow the petition.

4.1. In support of his submission, Mr. Islam has referred to two decisions of

this Court in the cases of **Samsun Noor @ Samsul Noor vs. State of Assam**, reported in **2022 (5) GLT 405** and **Nobiul Islam vs. the State of Assam and Anr., in Bail Appln. No. 89/2026.**

5. Per contra, Mr. Sarma, learned Additional Public Prosecutor has vehemently opposed the petition. He submits that though the charge-sheet was put up before the Magistrate on 29.09.2026, yet the charge-sheet, bearing No. 159/2026, was submitted by the I.O. on 14.09.2026, and that the I.O. is not responsible for failing to put up the same before the learned Court on 29.09.2026, and since charge-sheet has been submitted within the stipulated period of 90 days, the accused is not entitled to default bail.

5.1. In support of his submission, Mr. Sarma has referred to a decision of Hon'ble Supreme Court in the case of **Serious Fraud Investigation Office vs. Rahul Modi and Others**, reported in **(2023) 15 SCC 311**, especially paragraph No. 17.

6. On the other hand, Ms. Bhuyan, learned Amicus Curiae for the respondent No. 2 has subscribed the submission of Mr. Sarma, learned Additional Public Prosecutor and opposed granting of default bail to the accused persons, being the offences are very serious in nature.

7. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also perused scanned copy of the record received from the learned trial Court as well as the decisions referred by learned counsel for both the parties.

8. In view of the rival submissions of learned counsel for both the parties, the issue before this Court is whether the charge-sheet is submitted within the

stipulated period of 90 days or not, and whether the accused persons herein are entitled to default bail or not on that count.

9. It is not in dispute that accused No. 1 Shiva Thapa was arrested on 21.06.2026 and accused No. 2 Prabin Thapa was arrested on 28.06.2026. It also appears from the charge-sheet that the same was submitted on 14.09.2026. But, it was put up before the learned Sessions Judge, Dibrugarh only on 29.09.2026.

10. Now, the question is which date is to be counted, the date of filing of the charge-sheet i.e. 14.09.2026 or the date of production of the charge-sheet before the learned Sessions Judge i.e. 29.09.2026, for the purpose of counting 90 days.

11. It is to be noted here that a Co-ordinate Bench of this Court in **Samsun Noor @ Samsul Noor** (supra), has held that the date on which the charge-sheet is produced before the Magistrate/Judge, has to be counted as the actual date as Section 167(2) of the CrPC is integrally linked with Article 21 of the Constitution of India. Similar view is also taken in the case **Nobiul Islam** (supra).

12. However, Honourable Supreme Court in the case of **Serious Fraud Investigation Office** (supra), especially in paragraph No. 17, has held as under:

> "**17. The scheme of the provisions relating to remand of an accused first during the stage of investigation and thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within the period prescribed therein, according to this Court in Bhikamchand Jains. This Court held that in the**

event of investigation not being completed by the investigating authorities within the prescribed period, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. This Court was of the firm opinion that if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. However, once the charge-sheet was filed within the stipulated period, the right of the accused to statutory bail came to an end and the accused would be entitled to pray for regular bail on merits. It was held by this Court in Bhikamchand Jain that the filing of charge-sheet is sufficient compliance with the provisions of proviso (a) to Section 167(2) CrPC and that taking of cognizance is not material to Section 167."

13. Notably, in the case of **Suresh Kumar Bhikamchand Jain v. State of Maharashtra**, reported at **(2013) 3 SCC 77,** Hon'ble Supreme Court has held that filing of the charge-sheet is sufficient compliance with the provisions of Section 167(2) of the CrPC. Taking cognizance is not material for Section 167. Once the investigation end without filing the charge-sheet within time, the accused continues to remain in the custody of the Magistrate until the learned trial Court takes and assumes custody of the accused under Section 309 CrPC. The two stages are consequent to maintain continuity of the custody. Thus, placement of the charge-sheet before the Magistrate for the purpose of taking cognizance is not required within that period for compliance with the default bail provision.

14. In the instant case, the order of the learned Additional Sessions Judge, FTC, Dibrugarh, dated 24.09.2026, indicates that charge-sheet was submitted on 14.09.2026 and on 29.09.2026, the learned Sessions Judge had taken cognizance against the accused persons of the offence under Sections

103(2)/3(5) of the BNS, added Section 127(2) of BNS, read with Section 6 of the POCSO Act. The application of the ratio laid down in the case of **Serious Fraud Investigation Office** (supra), especially in paragraph No. 17, to the facts herein this case, this Court is of the view that filing of the charge-sheet is sufficient compliance with the provisions of proviso (a) to Section 167(2) CrPC. And since charge-sheet has indisputably been filed on 14.09.2026, taking cognizance on 29.09.2026, by the learned Sessions Judge, is not material to Section 167.

15. In view of the above discussion and finding, this Court is of the view that since the provisions of proviso (a) to Section 167(2) CrPC have been complied with on 14.09.2026, by filing the charge-sheet, the accused persons herein are not entitled to default bail.

14. However, as held in the aforementioned case, the accused are entitled to pray for regular bail on merit. But, having perused the scanned copy of the record, it appears that the charge-sheet has already been submitted against the accused persons and as such, at this stage, it cannot be said that no prima facie case is made out against the accused. From the statements recorded under Section 183 of BNSS, 2023 and Section 180 of BNSS, 2023, it appears that the witnesses have implicated the accused persons with the offence alleged in the FIR and the offences are very serious in nature and committed in a very diabolic manner while the victim was in their custody in the De-addiction Centre.

15. Further, in view of the decision of Hon'ble Supreme Court in the case of **Suresh Kumar Bhikamchand Jain** (supra), this Court afraid that the decisions of Co-ordinate Bench of this Court in **Samsun Noor @ Samsul Noor** (supra) and **Nobiul Islam** (supra), would not come into the assistance of the present

accused.

16. Accordingly, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the accused persons on merit or default bail can be granted to them and accordingly, this bail application stands dismissed.

JUDGE

Comparing Assistant