GAHC010182102026

2026:GAU-AS:15732

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

**Case No. : Bail Appln./2473/2026**

SRI AMAL SARKAR
S/O- LT SUDHIR SARKAR
R/O- BOHA BARDOLONI, PS- MAYONG, PO- BARPAK, DIST- MORIGAON,ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP/ASSISTANT PP OF THE GOVT.OF ASSAM

2:SMTI. GITA SUTRADHAR
W/O SRI ARJUN SUTRADHAR
R/O VILL- PUB MALOIBARI
P.S. KHETRI
DIST. KAMRUP (M)
ASSAM
PIN-78240

**Advocate for the Petitioner** : MR. S D ROY, MS K DEKA,MR. C DAS

**Advocate for the Respondent** : PP, ASSAM, A GAUTAM, AMICUS CURIAE R2

**BEFORE**
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**Date : 14.10.2026**

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

Sarma, learned Additional Public Prosecutor for the State respondent No. 1; and Mr. A. Gautam, learned Amicus Curiae for the respondent No. 2.

2. This application, under Section 483, BNSS is preferred by accused, namely, Amal Sarkar, who has been languishing in jail hazot in connection with Khetri P.S. Case No. 83/2026, under Section 64(1) of the BNS, read with Section 4 of the POCSO Act, for grant of bail.

3. Notably, above-noted case has been registered on the basis of one FIR lodged by one Rita Sutradhar (actual name withheld) on 19.07.2026. The essence of allegation, in the FIR, dated 19.07.2026, is that on 18.07.2026, at about 11:50 pm, accused, Amal Sarkar, knocked at the door of the room, where the minor daughter of the informant was staying and called her out. When she opened the door, the accused gagged her mouth and forcibly dragged her to the premises of the house of his elder sister and there, he physically and sexually assaulted her and since then, he was absconding.

4. Mr. Roy, learned counsel for the accused, submits that the accused was in a relationship with the victim and he is just 20 years old and he is behind the bar since 21.07.2026. Mr. Roy also submits that after completion of investigation, charge-sheet has been submitted against the accused and no witnesses have been examined so far, and that the accused is ready to face trial and will appear before the learned trial Court regularly.

4.1. By drawing the attention of this Court to the birth certificate of the victim, Mr. Roy submits that the same is manipulated and she was above 18 years of age, and Section 4 of the POCSO Act is not attracted here, and under such circumstances, he has contended to allow the petition.

5. Per contra, Mr. Sarma, learned Additional Public Prosecutor has

vehemently opposed the petition. He submits that the I.O. has collected sufficient incriminating materials against the accused, submitted charge-sheet against him. He also submits that though the accused has taken a plea that the birth certificate of the victim is manipulated and she was about 20 years old, yet, that is a subject matter of trial and that sufficient materials are against him, and therefore, it is contended to dismiss the petition.

6. On the other hand, Mr. Gautam, learned Amicus Curiae for the respondent No. 2, has vehemently opposed the petition. He submits that it is the pleaded case of the accused in paragraph No. 7 of this bail application, that the victim girl is 17 years old and even for the sake of argument, it is accepted that the victim is above 18 years old, then also, in view of the statement given by the victim under Section 183 of BNSS, 2023, the offence under Section 64(1) of the BNS, 2023 is clearly made out, and as such, no case for granting bail to the accused is made out.

6.1. Referring to an order of this Court dated 06.08.2026 in **Bail Appln. No. 1099/2026**, Mr. Gautam submits that when the offences are serious and the material witnesses are yet to be examined, the apprehension of influencing the witnesses cannot be ruled out, then bail cannot be granted and that here in this case, the material witnesses are yet to be examined and therefore, he has contended to dismiss the petition.

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 decision referred by Mr. Gautam, learned Amicus Curiae for the respondent No. 2.

8. It appears that the accused was arrested on 21.07.2026, and since then he has been languishing in jail hazot. Further, from the scanned copy of the record, which contains the birth certificate of the victim, reveals her date of birth to be 08.11.2009, but the digit 9 appears to be manipulated. However, this is a subject matter of trial as submitted by Mr. Sarma, learned Additional Public Prosecutor. And even if, for the sake of argument, it is accepted that the victim is a major, yet, age of the victim would not assist him, as because it has been alleged that he had committed sexual intercourse with her against her will. And as such the age of the victim appears to be immaterial for the offence under Section 64(1) of the BNS, 2023, under which also, the charge-sheet has been submitted by the Investigating Officer.

9. Moreover, material witnesses are yet to be examined and the possibility of tampering with the witnesses if the accused is released on bail, at this stage, cannot be ruled out since he belongs to the same locality. The offences are serious in nature and it carries punishment which may extend up to life imprisonment. Under such circumstances, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the accused and accordingly, this bail application stands dismissed.

**JUDGE**

**Comparing Assistant**