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2026:GAU-AS:15807

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

Case No. : Bail Appln./3136/2026

AJAHAR ALI
S/O- AJIMUDDIN, VILL- JAMLAI, P.S.- NAGARBERA, DIST.- KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.

Advocate for the Petitioner : MR. M I HUSSAIN, R KHA,MS. P AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : 15-10-2026

1. Heard Mr. M.I. Hussain, the learned counsel appearing for the accused-applicant. Also heard Mr. M.P. Goswami, the learned Addl. P.P, Assam appearing for the State.

2. This is an application filed under Section 483 of the BNSS, 2023, praying for granting bail to the accused-applicant, namely **Ajahar Ali** in

connection with **Nagarbera P.S. Case No.66/2026** registered under Sections **318(4)/61(2)/340(2)/303(2)** of the BNS, 2023 read with Section **66(C)** of the IT Act.

3. An FIR was lodged before the Nagarbera Police Station by one SI Champak Kalita on 17.09.2026, alleging that on verification of information received from National Cyber Crime Reporting Portal (NCRP) regarding online financial fraud, it came to light that a victim, namely Aravind Punjadi Tapase, a resident of Mumbai, had reported fraudulent transactions amounting to Rs.1,09,967/- on 13.07.2026. During verification and investigation of the cyber fraud, mobile Number 9365702103 was traced within the jurisdiction of Nagarbera Police Station and the mobile number was found to be associated with one Ajahar Ali, a resident of Nagarbera, Kamrup, Assam. Accordingly, the aforesaid Ajahar Ali was traced and apprehended and his mobile phone was recovered from his possession. It is alleged that during preliminary question, Ajahar Ali denied having any knowledge of any such transactions.

4. On the basis of the FIR, police registered Nagarbera P.S. Case No.66/2026 under the aforementioned sections.

5. The learned counsel appearing for the accused-applicant submits that the accused-applicant was arrested on 17.09.2026 and since then he is behind bars. He further submits that while arresting the accused-applicant, the Section 35(3) BNSS notice was not given to him, though it is mandatory in terms of Section 35(3) of BNSS as well as the ratio laid down by the Hon'ble Supreme Court in the case of ***Satender Kumar Antil Vs. Central Bureau Of***

Investigation & Anr., reported in ***(2022) 10 SCC 51.*** He submits that since the Section 35(3) notice was not given to the accused-applicant and the offence is punishable with imprisonment of 7 years maximum, the non-issuance of the notice to the accused-applicant vitiates the whole arrest. Therefore, he submits that the accused-applicant should be granted bail.

6. The case diary in the instant case is received and the same has been perused.

7. Mr. M.P. Goswami, the learned Addl. P.P. has opposed the prayer for bail at this stage.

8. On perusal of the order dated 18.09.2026, passed by the learned J.M.F.C., Boko, Kamrup, it is seen that as far as Section 35(3) BNSS notice is concerned, no satisfaction has been recorded by the learned J.M.F.C. From the records also, it is seen that the Section 35(3) BNSS notice was not served on the accused-applicant in the instant case.

9. Having found that Section 35(3) of the BNSS is not complied with by the police while arresting the accused-applicant and no proper explanation has also been provided as to why the Section 35(3) BNSS notice was not given to the accused-applicant, this Court is of the considered opinion that the same is in violation of the mandate of Section 35(3) BNSS and accordingly, the accused-applicant gets an indefeasible right to be released on bail.

10. Accordingly, it is directed that the accused-applicant, named above,

shall be released forthwith from jail on furnishing of a bail bond of Rs.30,000/- (Rupees Thirty Thousand only) with a suitable surety of like nature to the satisfaction of the learned J.M.F.C., Boko, Kamrup, subject to the following conditions:-

i) That the accused-applicant shall cooperate with the investigation and make himself available as and when called for by the Investigating Authority; and

ii) That the accused-applicant shall not hamper or tamper with the investigation in any manner.

11. In terms of the aforesaid directions, the instant bail application is disposed of as allowed.

JUDGE

Comparing Assistant