

GAHC010066822026



2026:GAU-AS:6004

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

Case No. : Bail Appln./954/2026

BABNA MAHATO ALIAS BABAN
SON OF LATE SARJU MAHATO
R/O SAMSANPARA, HIJUGURI, P.S. TINSUKIA, DIST. TINSUKIA, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SMTI. DIPTI HANDIQUE PRADHAN
W/O LATE BISWANATH PRADHAN
R/O KHALOI GAON
P.O. SAIKHOWAGHAT
P.S. DOOMDOOMA
DIST. TINSUKIA
ASSAM
PIN-786154
MOBILE NO. 7896799914

Advocate for the Petitioner : MR. N HASAN, MR SUBHRAJIT SAIKIA,MR. A HASAN

Advocate for the Respondent : PP, ASSAM,

:::BEFORE:::

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : **02.04.2026**

Date of pronouncement of judgment : **30.04.2026**

Whether the pronouncement is of the Operative part of the judgment : **NA**

Whether the full judgment has been Pronounced : **Yes**

Judgment & Order (CAV)

(Sanjeev Kumar Sharma,J)

Heard Mr. N. Hasan, learned counsel for the petitioner and Mr. S. Saikia, learned Additional Public Prosecutor for the State.

2. This is an application filed u/s 483 of the BNSS, 2023, r/w Section 187 of the BNSS praying for granting of default bail in respect of the petitioner who has been in custody since 16.10.2025 in POCSO Case No. 11/2026 u/s 64(2)/65/70(2) of the BNS, 2023, r/w Section 6 of the POCSO Act pending before the Court of the learned Additional Sessions Judge-cum-Special Judge, POCSO, Tinsukia (corresponding to Tinsukia P.S. Case No. 378/2025).

3. The prosecution case is that the respondent No. 2 being the complainant, lodged an FIR before the Tinsukia Police Station on 15.10.2025 to the effect that her daughter namely "Miss X" (name withheld) aged 15 years, left the house of Arati Deori of Nemuguri, Dibrugarh on 14.10.2025 without informing

anyone. After walking a bit from Nemuguri, she got one auto rickshaw and the auto driver left her at Dikom. Thereafter, a white colored auto driver of another auto found her and took her into the auto and handed her over to another auto driver at Tinsukia New Railway Station and asked him to board her in a train to Dholla. The said auto driver took her daughter to an isolated place and committed sexual assault on her first and then handed her over to other two auto drivers. The said two auto drivers also took her daughter to an isolated place and committed sexual assault on her and left her. While she was crying on the road, one other auto driver noticed her in the early hours of the morning and asked her as to what had happened. On knowing about the incident, he took her in his auto and took her near the Tinsukia Police Station and left her there after showing her the Tinkusia Police Station. Thereafter, her daughter appeared before the police station and informed the police that she had been subjected to rape. Hence the case.

4. Since this is an application for default bail alleging non-submission of charge sheet within the stipulated period as per law, the undisputed facts may be recounted.

5. The petitioner was arrested and produced before the learned Special Judge, POCSO, Tinsukia, on 16.10.2025, and on the same day, he was

remanded to judicial custody. The statutory period of detention is 90 days, as the offense pertains to Section 6 of the POCSO Act which period would expire on 14.01.2026 and in the event of non-submission of the charge sheet, the petitioner would have become entitled to default bail on 15.01.2026. The charge sheet was submitted to the office of the Special Judge, POCSO, Tinsukia, on 30.11.2025 and was put up on 08.01.2026, which is within the statutory period of detention. However, cognizance of the case was taken on 04.02.2026.

6. It is the contention of the learned counsel for the petitioner that the effective date of submission of charge sheet must be regarded as 04.02.2026, inasmuch as that was the effective date on which the court actually perused the charge sheet and took cognizance of the offense under Sections 6 of the POCSO Act/ Section 64(2)/65/70(2) of the BNS.

7. In support of his aforesaid submission, the learned counsel has placed reliance on a decision of a coordinate bench of this Court in the case of ***Samsun Noor Alias Samsul Noor Vs The State of Assam*** reported in ***(2022) 5 GLT 405 (Judgment & Order dated 07.10.2022 passed in BA No. 1958/2022)*** wherein, it has been held as follows:

“38. In view of the above, this Court is of the opinion that submission of the charge sheet before the Office of the Magistrate/the Court would not be sufficient compliance in terms with Section 173(2) of the Code read

with Rule 38 and 69 of the Assam Police Manual Part-IV and it is only when the Magistrate/the Court competent to take cognizance of the offence, puts the initials in the charge-sheet as well as in the Register maintained with date and seal of the Magistrate/the Court, it would be that date on which the charge sheet has been deemed to have been submitted to the Magistrate/Court.”

9. In the aforesaid case, the basic question that had arisen was whether the submission of the charge sheet to the office would constitute substantial compliance with section 173(2) of the CrPC, so as to deprive the accused of the privilege of default bail under Section 167(2) of the CrPC read with Section 36A (4) of the NDPS Act.

10. In the present case, however, it is an admitted position supported by record that after the charge sheet was submitted to the office of the Special Judge, POCSO, Tinsukia, on 30.11.2025, upon completion of investigation, the same was put up before the Court on 08.01.2026 and the following order was passed:

“Tinsukia P.S. Case No. 378/25

C.R. is put up today before me as the learned P.O has been transferred.

Accused person Shri. Babna Mahato, Sri. Rakesh Sarkar and Sri. Bikash Yadav are produced from judicial custody through V.C. District Jail, Tinsukia.

The I.O. of the case has already submitted charge sheet against the accused persons.

The accused persons are remanded to custody till 22.01.2026.

Fixed 22.01.2026 for production of the accused persons/N.O on charge sheet.”

11. The learned Additional Public Prosecutor, countering the contentions of learned counsel for the petitioner submits that once the charge sheet has been filed, the right to default bail stands extinguished. In support of this contention, he has placed reliance on a three-Judge bench decision of the Hon'ble Apex Court in the case of **Suresh Kumar Bhikamchand Jain Vs State of Maharashtra & Anr** reported in **(2013) 3 SCC 77** wherein it has been held as follows:

*“18. None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. **Whether cognizance is taken or not is not material as far as Section 167 CrPC is concerned.** The right which may have accrued to the petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 CrPC, it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 CrPC. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An*

accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) CrPC, the Magistrate is vested with authority to remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the C trial in terms of Section 309 CrPC. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court.”

12. The learned Additional Public Prosecutor has also relied upon the decision of the Apex Court in the case of ***Serious Fraud Investigation Office Vs Rahul Modi & Ors*** reported in **(2023) 15 SCC 311** wherein it has been held as follows:

“19. It is clear from the judgment of this Court in Bhikamchand Jains that filing of a charge-sheet is sufficient compliance with the provisions of Section 167 CrPC and that an accused cannot demand release on default bail under Section 167(2) on the ground that cognizance has not been taken before the expiry of 60 days. The accused continues to be in the custody of the Magistrate till such time cognizance is taken by the court trying the offence, which assumes custody of the accused for the purpose of remand after cognizance is taken. The conclusion of the High Court

that the accused cannot be remanded beyond the period of 60 days under Section 167 and that further remand could only be at the post-cognizance stage, is not correct in view of the judgment of this Court in Bhikamchand Jains.

27. A close scrutiny of the judgments in Sanjay Dutt, Madar Sheikh and M. Ravindran would show that there is nothing contrary to what has been decided in Bhikamchand Jain. In all the above judgments which are relied upon by either side, this Court had categorically laid down that the indefeasible right of an accused to seek statutory bail under Section 167(2) CrPC arises only if the charge-sheet has not been filed before the expiry of the statutory period.

Reference to cognizance in Madar Sheikh is in view of the fact situation where the application was filed after the charge-sheet was submitted and cognizance had been taken by the trial court. Such reference cannot be construed as this Court introducing an additional requirement of cognizance having to be taken within the period prescribed under proviso (a) to Section 167(2) CrPC, failing which the accused would be entitled to default bail, even after filing of the charge-sheet within the statutory period. It is not necessary to repeat that in both Madar Sheikh and M. Ravindran', this Court expressed its view that non-filing of the charge-sheet within the statutory period is the ground for availing the indefeasible right to claim bail under Section 167(2) CrPC. The conundrum relating to the custody of the accused after the expiry of 60 days has also been dealt with by this Court in Bhikamchand Jain It was made clear that the accused remains in custody of the Magistrate till cognizance is taken by the relevant court. As the issue that arises for consideration in this case is squarely covered by the judgment in Bhikamchand Jain, the order passed by the High Court on 31-5-20191 is hereby set aside."

13. Section 167(2) of the CrPC/S.187(3) of the BNSS read with section 36 A(4) of the NDPS Act, authorizes the detention of the accused for a period not

beyond 60/90 days, as the case may be, when investigation cannot be completed for whatever reason. If investigation is completed within the aforesaid period, no right to default bail arises. Such completion of investigation is proved by filing and placing the charge sheet including through electronic communication before the Magistrate/Court. Submission/filing in the office of the court/P.I. office is not sufficient in view of s.173(2)(i) CrPC/s.193(3)(i) of the BNSS which mandates the forwarding of the Final Report (c/s) to the Magistrate empowered to take cognizance of the offence involved. The evidence of such placement can be in the form of the initials of the Magistrate/Court on the charge sheet and register but at the same time, a judicial order recording the "putting up" of the charge sheet is equally acceptable evidence of such submission. When such judicial order is available, there is no necessity to insist upon the signature or initials of the Magistrate on the charge sheet and register in order to prove the completion of the investigation.

14. In the present case, the Order dated 08.01.2026 makes it evident that the charge sheet was presented before the Court on that day, although it was filed earlier on 30.11.2025 in the Office of the Court. Had it not been presented, the learned Presiding Officer could not have recorded that the I.O. had submitted the charge sheet upon completion of investigation. The facts establish that the

charge sheet was presented before the Court within the statutory period, which would have expired on 14.01.2026. The date of taking cognizance is of no relevance.

15. In the case of *Samsun Noor (supra)*, the Court had no occasion to deal with a situation where the charge sheet was presented before the Court within the statutory period and recorded by a judicial order. Consequently, that Court did not pronounce on whether the signature of the Magistrate on the register would still be required when a judicial order has already confirmed the filing of the charge sheet. Therefore, the aforesaid decision is of no help to the petitioner. Furthermore, the contention that the date of cognizance (08.01.2026) must be regarded as the effective filing date has no force in view of the consistent pronouncements of the Hon'ble Apex Court.

16. Further, I may venture to add that the decision in *Samsun Noor (supra)* was rendered by applying Rules 38 and 69 of the Assam Police Manual (Part IV), which requires a Prosecuting Inspector to obtain the signature of the Presiding Officer on the day of filing. It is the respectful view of this Court that the Assam Police Manual governs procedures within the Police Department and consists of executive instructions which do not bind the Court, as the Court is governed by its own rules of procedure. No such rule requiring a Judge/Magistrate to initial

the charge sheet or register has been incorporated in the Criminal Rules and Orders of the Gauhati High Court. Once a judicial order records the submission of the charge sheet, it is sufficient to establish the fact of filing as on the date of such order. However, the question of the applicability of the Assam Police Manual need not be decided in the present list.

17. In view of the findings already recorded. Hence, I feel no necessity to refer the question to a larger Bench in the instant case.

18. In view of the discussion above, the prayer for bail stands rejected and the petition stands dismissed.

JUDGE

Comparing Assistant