

GAHC010071212026



2026:GAU-AS:6693

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

Case No. : Bail Appln./993/2026

ROFIKUL ISLAM AND ANR
SON OF MONOWAR HUSSAIN

2: ROFIKUL ISLAM
SON OF ABDUR RAHMAN
BOTH ARE RESIDENTS OF VILLAGE- TEPKAI
P.S. BAGUWAN
DISTRICT- GOALPARA
ASSA

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocates for the petitioners : Mr. N J Dutta

Advocates for the respondent : Mr. R J Baruah
Mr. P Borthakur

BEFORE

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 30.04.2026

Date of pronouncement of judgment : 15.05.2026

Whether the pronouncement is of the : N/A

operative part of the judgment ?

Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

Heard Mr. N J Dutta, learned counsel for the petitioners. Also heard Mr. R J Baruah, learned Addl. Public Prosecutor for the State of Assam.

2. This is an application under Section 483 of the Bharatiya Nagrik Suraksha Sanhita (BNSS), 2023 for granting regular bail to the petitioner arrested in connection with Jakalabandha P.S Case No. 21/2025, under Section 220/25/29 of the NDPS Act, 1985.

3. Besides claiming innocence, learned counsel for the petitioners submits with reference to the arrest memo that the no signature of any family member or respected person of the locality where the accused was arrested has been taken on the said arrest memo, which fact is not disputed by the prosecution.

4. I have perused the said arrest memo and therefrom, it is evident that no

such signature of any witness as mentioned above is available in the memo of arrest. Therefore, the question arises as to whether the non-absence of such signature of the witness vitiates the arrest or renders the same illegal.

5. Learned Addl. Public Prosecutor submits that no prejudice has been suffered by the petitioner, as the grounds of arrest have also been furnished to him by way of notice under Section 47 BNSS as well as to his wife by way of notice under Section 48 BNSS.

6. Learned counsel for the petitioner has relied upon the decision of the Hon'ble Apex Court in ***D.K Basu Vs. State of West Bengal***, reported in ***(1997) 1 SCC 416***, wherein the Hon'ble Apex Court laid down certain requirements as follows:

"We therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures.

(1)

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the

family of the arrestee or a respectable person of the locality from where the arrest is made. It shall be countersigned by the arrestee and shall contain the time and date of arrest

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo or arrest is himself such a friend or a relative of the arrestee.

(4) the time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) the person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained".

7. The aforesaid directions have since been incorporated under the BNSS, which therefore governs the requirements to be followed by the police while arresting a person. In this regard, relevant provision of the BNSS is Section 36, which is quoted herein below:-

"36. Procedure of arrest and duties of officer making arrest-

(a) Bear an accurate, visible and dear Identification of his name which will facilitate easy Identification;

(b) Prepare a Memorandum of Arrest which shall be-

(1) Attested by at least one witness, who is a member of the family of the arrested person or a respectable member of the locality where the arrest is made;

(ii) Counter signed by the person arrested; and

(c) Inform the person arrested, unless the Memorandum is attested by a member of his family, that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest"

8. Section 62 of the BNSS further provides as follows:-

"62. Arrest to be made strictly accordingly to Sanhita- no arrest shall be made except in accordance with the provisions of this Sanhita or any other law for a time being in force **providing** for arrest."

9. A close perusal of the aforesaid provision of Section 36 of the BNSS shows that while clause (b) (i) of Section 36 provides that the memorandum of arrest shall be attested by at least one witness who is a member of the family of the

arrested person or a respectable member of the locality where the arrest is made, Clause (c) provides that the arrestee must be informed that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest. But such requirement will cease to operate if the memorandum of arrest is attested by a member of his family.

10. In other words, a combined reading of the aforesaid two clauses would show that the requirement of attestation by a member of the family of the arrestee or a respectable member of the locality where the arrest is made is diluted by Clause (c) of Section 36 by requiring that the arrestee must be informed that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest, in which case the attestation of the memorandum of arrest by at least one witness as described above is not mandatory. This requirement mandated by Clause (c) finds reflection in Section 48 BNSS, which relates to informing the family members/friends/nominated persons or person nominated by the arrestee to be informed of the grounds of arrest which is quoted herein below:-

"48. (1) Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives,

friends or such other persons as may be disclosed or mentioned by the arrested person for the purpose of giving such information and also to the designated police officer in the district.

(2) The police officer shall inform the arrested person of his rights under sub- section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person."

11. The purpose of the arrest memo under Section 36 BNSS is that it is the formal record of the deprivation of the liberty of the arrestee, and its primary purpose is to provide legal accountability for the arrest itself. Therefore, preparation of the memorandum of arrest mentioning the date, time, place of arrest as well as the place where the petitioner is being detained are all mandatory requirements of law. The necessity of taking the signatures of witnesses of the kind mentioned in Section 36 on the arrest memo is obviously an act of attestation of the particulars mentioned in the memo of arrest. That being the position of law, if the said particulars as available in the arrest memo

with regard to date, time, and place of arrest, etc. are communicated to the family member/friends/nominated person by way of a notice under Section 48 BNSS, without delay, the receipt whereof is duly acknowledged by the notice, by signing, the same purpose is served.

12. Section 36 of the BNSS envisages two different categories of asserting witnesses-(1) Family member and (2) represent member of the locality, as arrest may take place under two different circumstances or situations i.e. where family member may be present at the place of arrest e.g. - at the home of the arrestee or not present at such place of arrest, may be out of the vicinity of the place of residence of the arrestee, in which case, the signature of a respectable person of the locality where the arrest is made would suffice. But it is nowhere stipulated that such respectable person or family member must be present at the very spot where the arrest was made or that they must witness the actual act of arrest. That is why notice u/s 48 BNSS, containing the necessary particulars duly served without delay serves the same purpose of a hesitation. Of Course, additionally, the said notice u/s 48 BNSS must also contain the grounds of arrest, as held in *Vihaan Kumar (citation)*.

13. In the instant case, there is no dispute that the notice under Section 48

BNS, BNSS has been duly served upon the wife of the arrestee on the day of arrest itself i.e. 26.02.2026, mentioning the particulars of the arrestee and also mentioning about the date and place of arrest, as well as the place where he being held, that is Jakhalabandha.

14. What Clause (c) of Section 36 BNSS requires is that if the arrest memo is not signed/attested by a member of his family then he is to be informed that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest. This requirement stands duly complied as the arresting authority has itself informed the wife of the arrestee about his arrest by way of the notice under Section 48 BNSS.

15. In the cited case of ***Amirul Islam @ Nengra police & Anr. vs. The State of Assam, GAHC010245752025***, the question of Notice u/s 48 BNSS was not under consideration and in ***Dr. Sangeeta Dutta vs. The State of Assam, B.A 3650/2025***, no such notice was found on record and hence, the aforesaid decisions of the co-ordinate Benches are not attracted herein.

16. In view of the aforesaid discussion, I am of the view that absence of the signature of the witnesses as mentioned in Section 36 BNSS on the arrest memo does not ipso facto vitiate the arrest nor renders it illegal. Furthermore, in view

of the fact that commercial quantity of contraband was recovered from the position of the petitioner, the rigors of Section 37 are squarely attracted. And based on the material available on record, there is no ground to come to a view that the petitioner may not be guilty of the alleged offense.

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

JUDGE

Comparing Assistant