

GAHC010107162025



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

Case No. : Bail Appln./1662/2025

BITTU KUMAR
S/O UMESH SINGH
R/O VILL- EKNAR
P.S. HISUA
DIST. NAWADA, BIHAR
PIN- 805103.

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. S MITRA, MR. R. RAMEEZ, MR A K BORO, MR S. MITRA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 02.06.2025

- 1.** Heard Mr. S. Mitra, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 483 of BNSS, 2023 has been filed by the petitioner, namely, *Bittu Kumar*, who was arrested, on 15.04.2025, in connection with Noonmati P.S. Case No. 76/2025.
- 3.** The gist of accusation in this case is that on 06.04.2025, one Dipti

Timung had lodged an FIR before the Officer-in-charge of Noonmati Police Station, *inter alia*, alleging that at around 5:00 PM on that day when the informant entered into an SBI booth at Narangi Kalangpar Market to withdraw an amount of Rs.2000/-, he found there were two other persons inside the ATM booth who have seen the using of PIN by the informant. It is also alleged that those two persons exchanged the ATM card of the informant and later on it was found that an amount of Rs.40,000/- (Rupees Forty Thousand) has been withdrawn from the account of the informant.

4. The learned counsel for the petitioner has submitted that though the petitioner was arrested on 15.04.2025, however, after his arrest he was tortured by the police and was admitted in GMCH. He also submits that in the forwarding report dated 16.04.2025 submitted by the Investigating Officer of the Noonmati P.S. Case No. 76/2025, it was reported to the Court that the present petitioner attempted to flee away when he was arrested and, in the process, he fell down from the hillside and sustained serious injuries, therefore, he had to rushed to the hospital.

5. The learned counsel for the petitioner has submitted that in the forwarding report, the Investigating Officer has stated that the petitioner may be produced before the Magistrate through video conferencing, however, the Magistrate before whom the forwarding report was submitted neither allowed the petitioner to be produced through video conferencing nor he himself visited the hospital to ascertain the condition of the petitioner who was stated to be badly injured.

6. The learned counsel for the petitioner has submitted that instead the Magistrate allowed the Investigating Officer to produce the petitioner as soon as he is released from the hospital, however, no order has been passed by the

Magistrate as to whether the petitioner was remanded to judicial custody or to police custody.

7. The learned counsel for the petitioner has submitted that the petitioner has been arrested on 15.04.2025 and since then he has been under arrest without there being any order for his remand either judicial or police. He further submits that as per Section 187(2) of BNSS, the Magistrate to whom an accused is forwarded, may after taking into consideration whether such a person has not been released on bail or if his bail has been cancelled, authorize from time to time the detention of accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days in the whole or in parts at any time during initial 40 days or 60 days out of the detention period of 60 days or 90 days as the case may be.

8. The learned counsel for the petitioner has submitted that the learned Judicial Magistrate First Class, had erred in practically allowing the petitioner to remain in custody of the police as after his arrest was reported to the learned Judicial Magistrate First Class by the Investigating Officer by filing a forwarding report dated 16.04.2025 neither the petitioner was granted bail nor he was remanded to judicial custody or police custody. Hence, he submits that the arrest of the petitioner becomes illegal beyond 24 hours of his date and time of arrest as it infringes the fundamental rights of the petitioner guaranteed under Article 22(2) of the Constitution of India. In support of his submission, the learned counsel for the petitioner has cited following rulings:-

(i) "**Directorate of Enforcement –Vs- Subhash Sharma**" reported in "**2025 0 INSC 141**"

(ii) "**Khatri –Vs- State of Bihar**" reported in "**1980 0 Supreme (SC) 530**"

(iii) "**Manoj –Vs- State of Madhya Pradesh**" reported in "**1999 0 SCC (Cri)**"

478'

(iv) "**Noor Jahan –Vs- State of Karnataka**" reported in "**1991 0 Supreme (Kar) 89'**

9. On the other hand, the learned Additional Public Prosecutor has produced the case diary of Noonmati P.S. Case No. 76/2025 and has submitted that there are sufficient incriminating materials against the petitioner in the case diary. He also submits that the petitioner is a member of a gang involved in ATM fraud and has defrauded a large number of innocent persons.

10. He further submits that the prosecution side is not at fault as the Investigating Officer in his forwarded report dated 16.04.2025 has categorically stated that the petitioners sustained serious injuries when he tried to escape after his arrest during which he fell down from hill. It is also submitted that the Investigating Officer also stated in the forwarding report that as the petitioner was admitted in the Gauhati Medical College and Hospital, he may be allowed to produce before the Magistrate through video conferencing mode. He also submits that by order dated 16.04.2025, the Magistrate allowed the prayer of the Investigating Officer for producing of the petitioner before the Magistrate as and when he is released from the Hospital. The learned Additional Public Prosecutor, therefore, submits that the prayer for bail of the petitioner may be rejected.

11. I have considered the submissions made by the learned counsel for both the sides and have gone through the case diary of Noonmati P.S. Case No. 76/2025.

12. It appears that the investigation of the case has progressed fairly. It also appears that the petitioner, after his arrest on 15.04.2025, sustained serious injuries on his leg. Though, there are rival contentions as to how the

petitioner sustained injuries, however, the undisputed fact remains that for last 45 days he has been admitted in Gauhati Medical College and Hospital and no remand order is there on record in connection with Noonmati P.S. Case No. 76/2025.

13. Though, there is no dispute at the bar regarding the proposition of law, as mandated by Article 22 of the Constitution of India, that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of his arrest excluding the time taken for the journey from the place of arrest to the Court or the Magistrate and no such person shall be detained in custody beyond the said period without authority of a Magistrate, however, in the instant case, though the petitioner was arrested on 14.04.2025 (as apparent from the arrest memo of the petitioner available in the record), however, there is no order of remand either judicial or police neither the petitioner is released on bail.

14. It appears that the learned Magistrate has erred in not passing any order regarding production of the petitioner through video conferencing mode when such a prayer was made by the Investigating Officer on 15.04.2025 by simply allowing the Investigating Officer to produce the petitioner before the Magistrate as and when he is released from the hospital. Such an order without clarifying the status of the petitioner, as to whether he is in custody or a free person, when the arrest of the petitioner was reported to the said Magistrate stating the reasons for not producing him before such Magistrate, is in violation of the provisions contained in Section 57 of the BNSS as well as Article 22(2) of the Constitution of India.

15. It is settled constitutional position that an arrestee shall have to be produced before the nearest Magistrate within 24 hours excluding the time

required for his production before such Magistrate. There may be exceptions to such requirement, like in the instant case where the arrestee is injured and requires urgent medical care so that instead of producing such an arrestee before the Magistrate, he might have to be rushed to the hospital for providing urgent medical treatment. However, in such cases also the Magistrate may ascertain the condition of the arrestee through video conferencing or personally visiting such arrestee whose arrest has been reported to him by the Police. After the arrest of a person if he is not released on bail, an order for remand to judicial custody has to be made though it can be qualified by clarifying that the petitioner may continue to stay in the hospital after ascertaining such a requirement. For the said purpose, the Magistrate may also call for a report from the hospital where the arrestee has been admitted.

16. However, as Section 187 of BNSS categorically states that subject to condition of bail, the Magistrate may authorize his detention either in judicial or in police custody. Unless, such an order is passed, the initial arrest of the petitioner beyond the period of 24 hours from the time of his arrest, would become illegal.

17. In this case, the petitioner has been admitted in hospital for last 45 day after the date of his arrest. Though, he is admitted in the hospital and it appears that his status is not of a free person but of an arrestee as he has not been granted bail in this case, however, no order under Section 187 BNSS was passed by the Magistrate. In absence of any order of remand beyond the period of 24 hours from the time of his arrest, his arrest gets vitiated on completion of 24 hours in custody. Since such non-production of the petitioner, even through video conferencing mode, beyond 24 hours in custody amounts to violation of Article 22(2) of the Constitution of India, his fundamental right to liberty

guaranteed under Article 21 of the Constitution of India is also violated and, on that count, the petitioner is entitled to go on bail.

18. For the reasons stated hereinabove, the petitioner, namely, Bittu Kumar is allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand) with two sureties of like amount subject to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (M) with following conditions:-

(i) That immediately after his release, on bail, from the Gauhati Medical College and Hospital, the petitioner shall appear before the Investigating Officer of Noonmati P.S. Case No. 76/2025 and shall co-operate in the investigation;

(ii) That he shall not leave the jurisdiction of the learned Chief Judicial Magistrate, Kamrup(M) without prior leave of the said Court;

(iii) That the petitioner shall provide his contact details including photocopies of his Aadhar Card or Driving License or PAN card, mobile number, and other contact details before the Court of the learned Chief Judicial Magistrate, Kamrup(M); and

(iv) Violation of any of the above bail conditions would liable the bail granted to the petitioner to be cancelled

19. This bail application is accordingly disposed of.

20. Send back the case diary.

JUDGE

Comparing Assistant