

Mahbubul Hoque vs The State Of Assam on 5 March, 2025

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Bench: Manash Ranjan Pathak

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GAHC010043312025

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

Case No. : Bail Appln./576/2025

MAHBUBUL HOQUE
S/O LATE IBRAHIM ALI R/O GYAN KUTIR, NIRIBILI PATH, GHORAMARA
CHARIALI, BHETAPARA, GUWAHATI-781027, UNDER BASISTHA PS,
KAMRUP(M), ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BORA, MR. V A CHOWDHURY, MR. D K BAIDYA, MS.
C CHOUDHURY

Advocate for the Respondent : PP, ASSAM,

Linked Case : Bail Appln./602/2025

HIRAMONI SAIKIA
W/O BASANTA BORA R/O 82
USHLAY APARTMENT
HATIGAON
LAKHIMINAGAR
UNDER HATIGAON PS
KAMRUP(M)

ASSAM.

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VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP
ASSAM

Advocate for : MR. M S HUSSAIN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case : Bail Appln./605/2025

BIJOY DUTTA
S/O KRISHNA DUTTA R/O VILLAGE SARISHA
PS KARIMGANJ
DIST SRIBHUMI
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP
ASSAM

Advocate for : SAMRIDDHI SAIKIA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

05.03.2025 Heard Mr. K. P. Pathak, learned Senior Counsel assisted by Mr. M. S. Hussain, learned counsel for the petitioner in B.A. No. 602/2025 (Smti. Hiramoni Saikia Vs. State of Page No.# 3/7 Assam).

2. Heard Mr. A. M. Bora, learned Senior Counsel assisted by Mr. D. K. Baidya, learned counsel for the petitioners in B.A. No. 576/2025 (Mahbubul Hoque Vs. State of Assam) and B.A. No. 605/2025 (Bijoy Dutta and 3 others Vs. State of Assam). Also heard Mr. M Phukan, learned Public Prosecutor, Assam in all these bail applications for the State respondent.

3. The petitioners in these three bail applications have been shown arrested in Patharkandi Police Station Case No. 55/2025 under Sections 318(4)/316(5)/336(3)/111(4) BNS, 2023 read with Section 11(1) of the Public Examinations (Prevention of Unfair Means) Act, 2024.

4. The petitioners were produced before the learned Chief Judicial Magistrate, Sribhumi (Karimganj) on 22.02.2025 in said Patharkandi P.S. Case No. 55/2025 and by order dated 22.02.2025, the learned Sub-Divisional Judicial Magistrate (Sadar), Sribhumi (Karimganj) remanded the petitioners to Judicial Custody and fixed the matter on 07.03.2025 for production.

5. Mr. Pathak, learned Senior Counsel appearing for the petitioner in B.A. No. 602/2025 (Smti. Hiramoni Saikia Vs. State of Assam) submitted that the petitioner, along with the petitioners of B.A. No. 576/2025 (Mahbubul Hoque Vs. State of Assam) and B.A. No. 605/2025 (Bijoy Dutta and 3 others Vs. State of Assam) were also arrested in Patharkandi P.S. Case No. 54/2025 with the similar set of allegations and that the FIR relating to Patharkandi P.S. Case No. 55/2025 is the second FIR relating to the same incident as that of said Patharkandi P.S. Case No. 54/2025.

6. In this regard, Mr. Pathak, learned Senior Counsel relied on the decision of the Hon'ble Supreme Court in the case of T.T. Antony Vs. State of Kerala & Others , reported in (2001) 6 SCC 181, wherein, the Hon'ble Apex Court have held that the second FIR relating to the same incident is not valid and the investigation made pursuant thereto is of no legal consequence and needs to be quashed.

7. Mr. Pathak, learned Senior Counsel also submitted that in said Patharkandi P.S. Case No. 54/2025, registered under Sections 61(2)/318(4)/316(5)/336(3) BNS, 2023 read with added Section 111(4) BNS, 2023, the petitioners have been granted bail by a Co-ordinate Page No.# 4/7 Bench of this Court by Order dated 03.03.2025 in Bail Application No. 563/2025 and Common Order dated 04.03.2025 in Bail Application Nos. 600/2025 and 601/2025, respectively.

8. Mr. Pathak, learned Senior Counsel further submitted that the petitioner Smti. Hiramoni Saikia has been arrested in violation of the Provisions of Sections 47 and 48 of BNSS, 2023, thereby violating the Constitutional Provisions of Article 22(1).

9. In this regard, Mr. Pathak, learned Senior Counsel relied on the decision of the Hon'ble Supreme Court in the case of Vihaan Kumar Vs. State of Haryana and Another, reported in (2025) SCC OnLine SC 269.

10. Mr. Pathak, learned Senior Counsel also submitted that in addition to his said submission, he also relies on the submission of Mr. Bora, learned Senior Counsel in B.A. Nos. 576/2025 and 605/2025.

11. Mr. A. M. Bora, learned Senior Counsel appearing for the petitioners in B.A. No. 576/2025 and B.A. No. 605/2025 submitted that the FIR of Patharkandi P.S. Case No. 54/2025 and the FIR of Patharkandi P.S. Case No. 55/2025, i.e., relating to the present cases, are same and identical and relate to the one and same incident, where the FIR of Patharkandi P.S. Case No. 55/2025 is more elaborate.

12. Mr. Bora, learned Senior Counsel also submitted that since the petitioners have already been released on bail in said Patharkandi P.S. Case No. 54/2025, therefore, the petitioners herein are also entitled for their bail and at least interim bail; since the prosecution failed to establish that it had served Notice under Sections 47 and 48 of the BNSS, 2023 along with the ground of arrest to the present petitioners while arresting them in said Patharkandi P.S. Case No. 55/2025, thereby violating the Constitutional Provisions under Article 22(1).

13. By placing both the FIRs relating to Patharkandi P.S. Case No. 54/2025 and Patharkandi P.S. Case No. 55/2025, Mr. Bora, learned Senior Counsel submitted that in the FIR of Patharkandi P.S. Case No. 54/2025, it is already indicated that another Patharkandi P.S. Case has been registered against the present petitioners, which is Patharkandi P.S. Case No. 55/2025.

14. Moreover, from those two FIRs, Mr. Bora, learned Senior Counsel placed that in the Page No.# 5/7 forwarding report pertaining to the FIR of Patharkandi P.S. Case No. 54/2025, the petitioners were arrested at 03:00 P.M. on 22.02.2025, whereas from the FIR of Patharkandi P.S. Case No. 55/2025, it can be seen that the same was registered at 10:30 A.M with Patharkandi P.S. G.D.E. No. 03 dated 22.02.2025 at 14:50 hrs. (02:50 P.M.). Mr. Bora, therefore submitted that in said Patharkandi P.S. Case No. 55/2025, they could not have been shown arrested as they in Patharkandi P.S. Case No. 54/2025 were arrested on 22.02.2025 at 03:00 P.M only.

15. Mr. Bora, learned Senior Counsel placing the remand order dated 22.02.2025 passed by the learned SDJM (S), Sribhumi in said Patharkandi P.S. Case No. 55/2025 submitted that in the said Order dated 22.02.2025, there is no whisper that the provisions of Sections 47 and 48 of BNSS, 2023 were followed by the police of Patharkandi Police Station by serving and/or communicating the grounds of arrest while arresting the accused petitioners in said Patharkandi P.S. Case No. 55/2025.

16. In this regard, Mr. Bora, learned Senior Counsel relied on the decision of the Hon'ble Apex Court in the case of Vihaan Kumar (Supra) with regard to the violation of Constitutional Provisions of Article 22(1) and Sections 47 and 48 of the BNSS, 2023.

17. Mr. Bora, learned Senior Counsel also relied on the decision of the Hon'ble Apex Court in the case of Prabir Purkayastha Vs. State (NCT of Delhi) , reported in (2024) 8 SCC

254.

18. With regard to the two FIRs relating to the same incident pertaining to Patharkandi P.S. Case No. 54/2025 as well as Patharkandi P.S. Case No. 55/2025, Mr. Bora, learned Senior Counsel relied

on the decision of the Hon'ble Supreme Court in the case of T.T. Antony (Supra) as well as the decision of the Hon'ble Supreme Court in the case of Babubhai Vs. State of Gujrat & Others, reported in (2010) 12 SCC 254.

19. Relying on the decision of the three Judges Judgment of the Hon'ble Supreme Court in the case of Dhanraj Aswani Vs. Amar S. Mulchandani and Another, reported in (2024) 10 SCC 336; Mr. Bora, learned Senior Counsel submitted that even in the case of a shown arrested case, the arrested accused is entitled for the grounds of arrest to be furnished to him or his family members; stating that in the said case of Dhanraj Aswani (Supra) , the learned Apex Court have held that while a person, who is already in custody in connection Page No.# 6/7 with a particular offence, apprehends arrest in a different offence, then the subsequent offence is a separate offence for all practical purposes which would necessarily imply that all rights conferred by the statute on the accused as well as on the Investigating Agency in relation to the subsequent offences are independently protected.

20. Mr. Bora, learned Senior Counsel, on behalf of the petitioners also stated that in the bail applications preferred by the petitioners relating to Patharkandi P.S. Case No. 54/2025; by filing an additional affidavit, it was placed before the Court that Notice under Sections 47 and 48 of the BNSS, 2023 as well as the Arrest Memo were at least served on the accused petitioners. But, the investigating authority of Patharkandi P.S. Case No. 55/2025 failed to furnish any such Notices served on the accused petitioners under Sections 47 and 48 of the BNSS, 2023.

21. Mr. M. Phukan, learned Public Prosecutor, Assam with regard to the claim of the petitioners pertaining to the two FIRs relating to the same incident submitted that both in the case of T.T. Antony (Supra) as well as Babubhai (Supra), the cases related to incident occurred on one day, whereas with regard to Patharkandi P.S. Case No. 55/2025, the incident was of continuous process that relates to economic offence.

22. Mr. Phukan, learned Public Prosecutor also submitted that though the petitioners have been shown arrested in Patharkandi P.S. Case No. 55/2025, all the Constitutional provisions as well as the provisions of Sections 47 and 48 of the BNSS, 2023 have been followed and submitted that he should be allowed to place the relevant case records, including the case diary and if, on perusal of those, the Court is satisfied that the provisions of Sections 47 & 48 of the BNSS, 2023 as well as the Constitutional provisions relating to the arrest of accused persons are not followed, then the Court shall pass the necessary order on the next date.

23. Mr. Bora, learned Senior Counsel appearing for the petitioners in B.A. No. 576/2025 and B.A. No. 605/2025, more particularly, the petitioner of B.A. No. 576/2025 submitted that he is suffering from medical ailments and that he is the Chancellor of the USTM and if an interim bail is granted to him, he shall not leave the jurisdictional place and in that case, he is also willing to surrender his passport, if so required, before this Court.

24. For such interim bail of the petitioners of B.A. Nos. 576/2025 and 605/2025, Mr. Page No.# 7/7 Bora, learned Senior Counsel relied on the decision of the Hon'ble Apex Court in the case of Arnab

Manoranjan Goswami Vs. State of Maharashtra and Others, reported in (2021) 1 SCC 802.

25. Mr. Pathak, learned Senior Counsel, appearing for the petitioner in B.A. No. 602/2025 submitted that following the provisions of Article 140 of the Constitution, the law laid down by the Apex Court is applicable to the High Courts as well as the District Courts.

26. Considered the decisions cited by the parties, including the decision of the Hon'ble Apex Court in the case of Vihaan Kumar (Supra).

27. Considering the submissions of the parties, the State respondent is directed to submit its reply in these three bail applications on or before 08.03.2025 by serving copies to the counsels of the petitioners.

28. The petitioners thereafter on or before 10.03.2025 shall file their rejoinders, if any, to such replies of the State.

29. List on 11.03.2025.

30. On the said date, i.e., on 11.03.2025, Mr. M. Phookan, learned Public Prosecutor, Assam shall produce the case diary of Patharkandi P.S. Case No. 55/2025.

31. List accordingly on 11.03.2025.

JUDGE Comparing Assistant