

Page No.# 1/15 vs The State Of Assam on 13 November, 2024

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GAHC010204622024

2024:GAU-AS:11070

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

Case No. : Bail Appln./2984/2024

PORISHMITA BAISHYA PHUKAN @ PORISHMITA PHUKAN
W/O ROBIN PHUKAN
R/O MOHAN DEODHAI
SANTIPUR GAON,
P.S. KAKOTIBARI
DIST. CHARAIDEO, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. A CHAUDHURY, MR. D BORA, MR. N MAHAJAN, MR. P K DAS

Advocate for the Respondent : PP, ASSAM,

Linked Case : Bail Appln./3105/2024

DULAL BORA
S/O LATE DEBEN BORA
R/O HOUSE NO. 118
KOINADHORA TINIALI
P.O. - KHANAPARA
P.S. - BASISTHA
DIST- KAMRUP (M)

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ASSAM

PIN-781022

2: THE STATE OF ASSAM
REP BY THE PP
ASSAM
VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for : MR. S N TAMULI
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

:: PRESENT ::
HON'BLEMR. JUSTICE PARTHIVJYOTISAIKIA

For the Petitioners : Mr. B.K. Mahajan and
Mr. S.N. Tamuli,
Advocates.

For the Respondent : Mr. M. Phukan,
Public Prosecutor,
Assam.

Date of Hearing : 06.11.2024.
Date of Judgment : 13.11.2024.

JUDGMENT AND ORDER (CAV)

These two bail applications are filed under Section 483 of the BNSS of 2023 whereby the petitioners Smti. Porishmita Baishya Phukan @ Porishmita Phukan and Shri Dulal Bora who were arrested in connection with Sonari P.S. Case No.112/2024 have prayed for releasing them on bail.

2. Heard Mr. B.K. Mahajan and Mr. S.N. Tamuli, the learned counsels appearing for
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the petitioners. Also heard Mr. M. Phukan, the learned Public Prosecutor, Assam.

3. Late Debajit Hazarika was the President of Rajapukhuri Gaon Panchayat. On 15.07.2024, the petitioner Dulal Bora wrote letters to the the Governor of Assam; Chief Executive Officer, Charaideo Zila Parishad and to the Principal Secretary of Panchayat & Rural Development, Government of Assam at Guwahati wherein he alleged irregularities in construction of Raidongia Devitukura Hari Mandir. It was alleged that in the financial year 2021-22, an amount of 2,16,500/- was sanctioned for construction of the said Mandir under Rajapukhuri Gaon Panchayat. He further alleged that somebody had misappropriated the aforesaid money. In order to show

the Mandir was under construction, some photographs were uploaded in the Mera Panchayat Application. Sri Dulal Bora has alleged that those photographs were not of the Mandir but of the house built by late Debajit Hazarika. According to Dulal Bora, by uploading fake photographs, 2,16,500/- was misappropriated.

4. On the basis of the said applications filed by Sri Dulal Bora, the Chief Executive Officer, Charaideo Zila Parishad wrote a letter to the Block Development Officer, Sonari, directing him/her to lodge an FIR against late Debajit Hazarika and all other persons allegedly involved in misappropriation of public funds in construction of Hari Mandir at Devitukurachuk under Rajapukhuri Gaon Panchayat.

5. Accordingly, the Block Development Officer, Sonari, lodged an FIR before Officer-in-Charge, Sonari Police Station requesting him to carry out an inquiry against late Debajit Hazarika, former President Rajapukhuri Gaon Panchayat and all other persons involved in misappropriation of money in construction of the aforesaid Hari Mandir.

6. Thereafter, on 20.09.2024, late Debajit Hazarika committed suicide by hanging. On the same day, his wife Mousumi Likson Hazarika lodged an FIR before police alleging that her deceased husband was threatened and mentally tortured by some prominent people by spreading false news on social media and newspapers. She alleged that the said acts were done just to tarnish the image of her deceased

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husband. Mrs. Hazarika states that her husband left behind a suicide note wherein he had mentioned the names of Sri Ranjit Borgohain (Ex-Block Development Officer), Md. Rafik Ahmed (Journalist, News Live), Smti. Porishmita Phukan (Journalist) and Shri Dulal Bora (RTI Activist). The complainant Smti. Hazarika has accused those persons that for their acts, her husband had to commit suicide.

7. Late Hazarika left behind two suicide notes containing about 26 pages. One was written while he was in Nepal where he had gone to receive treatment of his eyes. This note does not contain any date, but the other note was written on 18.09.2024.

8. The gist of the undated letter shows that he was interested in public service since his childhood. He was an Office Bearer of the NE School where he studied. In the High School also, he was the Assistant General Secretary. When he was in Class-XI, he was the General Secretary. Subsequently, in Sapekheti area, he was the Office Bearer of All Assam Students Union in different capacities. He was the youngest Executive Member of the students union in the district of Sivasagar. He never earned any bad reputation as a student leader. Later on, by paying bribe, he became an officer of a company. For paying the bribe, he had to sell the ornaments of his wife. He was maintaining good relationship with highly placed people and therefore, he used to give electricity connections to some people who actually did not deserve to be given electricity connection. While doing such jobs, he earned some extra money. He gave examples of his deeds. In one occasion, he gave electricity connection to the house of an Engineer, for that he received twenty thousand rupees. On one occasion, he was misbehaved by a former ULFA. He rose in the ladder of the company. Later on, he was brought to Sonari by an MLA for doing party works. The same MLA told him to work carefully so that the image of the MLA does not get tarnished. Late Debajit Hazarika wrote that he did not have any greed for money.

9. On a subsequent occasion, he became the President of the Gaon Panchayat. When his term ended, without any advanced planning, he got involved in political

turmoil. Though he remained normal in front of his family members, he developed embarrassment to appear in the public.

10. Late Debajit Hazarika has alleged that Md. Rafik Ahmed, the Journalist of News Live and his concubine Porishmita Phukan (he used the word Rakhel and accused that after maintaining relationship with four persons she is now his Rakhel) and Sri Ranjit Borgohain, the retired BDO are responsible for his predicament.

11. Late Debajit Hazarika had accused Md. Rafik Ahmed to be of bad character. He allegedly sent obscene messages to his wife.

12. Late Hazarika had mentioned that he had good relationship with Ex-BDO, Ranjit Borgohain before he joined BJP. There was a rumour in the 2026 elections, late Hazarika will be given the party ticket for MLA.

13. Late Hazarika wrote that he was hurt after seeing the news accusing him of misappropriation of money at the time of construction of Devitukura Hari Mandir. According to him, for the aforesaid news, people started to hate him.

14. Late Hazarika accused the petitioner Porishmita Phukan accusing her as a woman of bad character. He also accused Rafik Ahmed that even being a Muslim, he was involved in love jihad with Hindu woman.

15. In the suicide note dated 18.09.2024, late Hazarika has written that he was thinking about committing suicide for a long time. But he did not do so for the sake of his relatives. He accused the petitioner Dulal Bora, who is associated with NE Bharat, on the ground that being an outsider, meaning not a resident of the district of Sivasagar, he got himself involved in the matters relating to Sivasagar district. Therefore, late Hazarika wrote that for his death, the petitioner Dulal Bora is also responsible.

16. According to late Hazarika, he was mentally harassed by News Channels. He has written that in spite of being termed as a fourth pillar of republic, these people

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attacked him personally.

17. After the death of Debajit Hazarika, on 20.09.2024, his wife lodged an FIR before police alleging that Sri Ranjit Borgohain (Ex-BDO), Md. Rafik Ahmed (News Live), Smti. Porishmita Phukan (Reporter) and Sri Dulal Bora (RTI worker) are responsible for commission of suicide by her husband.

18. Police registered the case in Sonari P.S. Case No.112/2024 under Sections 108/308(2) and 3(5) of BNS, 2023.

19. The present two petitioners were arrested by police. Therefore, they have come to this Court praying for releasing them on bail.

20. Mr. Phukan has objected to these bail applications. According to Mr. Phukan, these types of accusations are there in different parts of the State of Assam for which different police cases were registered against the petitioner Dulal Bora. To prove this

submission, Mr. Phukan has placed a judgment of this Court that was delivered on 25.02.2020, in PIL 29 of 2019.

21. In order to buttress his points, Mr. Mahajan has relied upon a judgment of the Supreme that was delivered in Ude Singh & Ors., vs. State of Haryana, reported in (2019) 17 SCC 301. Paragraphs 15 and 16 of the said judgment are quoted as under:

"15. Thus, "abetment" involves a mental process of instigating a person in doing something. A person abets the doing of a thing when:

(i) he instigates any person to do that thing; or

(ii) he engages with one or more persons in any conspiracy for the doing of the thing; or

(iii) he intentionally aids, by acts or illegal omission, the doing of that thing.

These are essential to complete the abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything.

16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment

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the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case."

22. I have considered the submissions made by the learned counsel of both sides.

23. Now, a close look into the law laid down in Section 108 of BNS, 2023 may be required. The old Indian Penal Code has been replaced by Bharatiya Nyaya Sanhita, 2023. The old Section of 306 IPC is now Section 108 of BNS, 2023. Similarly, Section 107 of the IPC has been replaced by Section 45 of the BNS, 2023. There is no significant change in the definitions. Therefore, in this order I shall rely upon both the old law as well as the new law.

The Section 108 of the BNS, 2023 reads as under:

108. Abetment of suicide - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

24. From a bare reading of the provision, it is clear that to constitute an offence under Section 108 of the BNS, 2023, the prosecution has to establish:

(i) that a person committed suicide,

(ii) that such suicide was abetted by the accused.

25. In other words, an offence under Section 108 of the BNS, 2023 would stand only if there is an abetment for the commission of the crime. The parameters of abetment have been stated in Section 45 of the BNS, 2023, which defines abetment of a thing as follows:

A Section: 45. Abetment of a thing -

A person abets the doing of a thing, who:

1. instigates any person to do that thing; or

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2. engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

3. intentionally aids, by any act or illegal omission, the doing of that thing

Explanation 1: A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

26. As per the law laid down in Section 107 of the IPC as well as under Section 45 of the BNS, 2023, a person can be said to have abetted in doing a thing, if he, firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Explanation to Section 45 of the BNS, 2023 states that any willful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of abetment. It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC.

27. Now, I shall delve into the settled position of law on the subject "abetment to commit suicide". In *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)*, decided on: 10.08.2009 and reported in AIR 2010 SC1446, the Hon'ble Supreme Court has dealt with this subject. The case history of *Chitresh Kumar Chopra* (supra) goes like this ----

On 4th July, 2002, one Rahul Kaushik lodged the said First Information Report (FIR) with Police Station, Mehrauli stating that his father Jitendra Sharma (hereinafter

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referred to as "the deceased") had committed suicide on 3rd July, 2002 by shooting himself with his licensed revolver. It was alleged that the deceased was a partner with the appellant along with two other persons viz., Jahuruddin and Mahavir Prasad and they were all engaged in the real estate business; he committed suicide on account of the problems created by these three persons; the deceased left behind a suicide note which mentioned that there were some money transactions between them and thus, these three persons had abetted the deceased to commit suicide. For the sake of ready reference, relevant portion of the suicide note is extracted below:

The money of Shri Bansi Dhar and Shri Grewal is with Ram Pashre. The money of Shri Puri and Rajendra has been given to Ramjan, Mehrauli by Jahur and Jahur has become dishonest. The money of B.C. Malik and K.S. Yadav is with Mahesh, who has written the same and given. The rest, the ex-SDE, Pamer Singh and had taken and did not do Puri's work.

My children known nothing about this matter. C.K. Chopra's money has been given by Jahur, Jahur and Chopra are saying things against me and are thereby troubling me. Kartar etc., money was taken by Jahur and Mahavir. They had taken it. The reason for the scandal are Chopra and his friends. They are troubling me and are pressurizing me to write all this. I am stressed and therefore, going away.

The Hon,ble Supreme Court has held --

As per the Section, a person can be said to have abetted in doing a thing, if he, firstly instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Explanation to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct

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involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC.

28. In Chitresh Kumar Chopra (supra), the Supreme Court further held that as per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the IPC.

29. The meaning of the said word was considered by the Hon,ble Apex Court in Ramesh Kumar v. State of Chhattisgarh, reported in (2001) 9 SCC 618. At this stage, the case history of Ramesh Kumar (supra) may be stated-----

30. Sri Seema Devi, daughter of Sohan Lal Sharma and Smt. Prabahawati Devi was married to accused-appellant Ramesh Kumar on 23.6.1985. Thereafter, on 17.6.1986, within one year of marriage, Seema died of suicide. On 16.6.1986, she poured kerosene on herself and set herself to fire. Before committing suicide she wrote a suicide note and a letter to her husband in a diary on pages 11 and 12 thereof. Her dying-declaration was recorded on 16.6.1986 by, Parmeshwar Dayal, Tehsildar and Executive Magistrate. Sohan Lal Sharma is a resident of Raipur, Madhya Pradesh. The accused-appellant was residing in Shantinagar locality of Raipur. Seema's elder sister Shalini married with Dr. Ramadhar Sharma is also residing in Raipur. Thus, the three families. i.e., the family of father of Seema, the family of her elder sister Shalini and the family of the accused-appellant are all residents of Raipur though residing in different localities at reasonable distances from each other. Nevertheless the three families were on visiting terms as admitted by almost all the witnesses. The finding of guilt as recorded by the Trial Court and the High Court rests on the testimony of five witnesses, namely, Atul Kumar, brother of the deceased, Shalini and Dr. Ramadhar Sharma, respectively, the sister and sister's husband of the deceased, Sohan Lal Sharma and Prabahawati Devi, parents of the deceased. The letter to her husband in a

diary on pages 11 and 12 thereof reads as under -

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Page 11--"I Smt. Seema Dubey, ashamed of my own faults, am committing suicide. Nobody is responsible and none should be harassed for it".

On page 12 she wrote a letter to her husband as under:-

"Dear Raja,

With all love,

Raja this my last love. You have made me free that I may do whatever I wish and go where-ever I like. Raja, after coming in this house now I have no other place to go leaving you. You know, you have now made me free of words I had given that I would not commit suicide. Now I would die peacefully...Raja, this is my last word I do love you and you only, not anyone else.

Now I cannot write 'yours'

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31. In Ramesh Kumar (supra), under the said circumstances, the Hon,ble Apex Court has held as under-

The picture which emerges from a cumulative reading and assessment of the material available is this. Presumably because of disinclination on the part of the accused to drop the deceased at her sister's residence the deceased felt disappointed, frustrated and depressed. She was overtaken by a feeling of shortcoming which she attributed to herself. She was overcome by a forceful feeling generating within her that in the assessment of her husband she did not deserve to be his life-partner. The accused Ramesh may or must have told the deceased that she was free to go anywhere she liked. May be that was in a fit of anger as contrary to his wish and immediate conveyance the deceased was emphatic on being dropped at her sister's residence to see her. Presumably the accused may have said some such thing-you are free to do whatever you wish and go wherever you like. The deceased being a pious Hindu wife felt that having being given in marriage by her parents to her husband, she had no

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other place to go excepting the house of her husband and if the husband had "freed" her she thought impulsively that the only thing which she could do was to kill herself, die peacefully and thus free herself according to her understanding of the husband's wish. Can this be called an abetment of suicide? Unfortunately, the Trial Court misspelt out the meaning of the expression attributed by the deceased to her husband as suggesting that the accused had made her free to commit suicide. Making the deceased free-to go wherever she liked and to do whatever she wished, does not and cannot mean even by stretching that the accused had made the deceased free "to commit suicide" as held by the Trial Court and upheld by the High Court.

32. In Ramesh Kumar (supra), speaking for the three-Judge Bench, R.C. Lahoti, J.

(as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that

actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction"

(See: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See: Oxford Advanced Learner's Dictionary - 7th Edition). Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. As observed in Ramesh Kumar's case (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i) the accused kept on irritating or annoying the deceased by words, deeds or willful omission or conduct which may even be a willful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or willful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

33. In another recent case, Gangula Mohan Reddy vs The State of Andhra Pradesh, decided on 05.01.2010 and reported in AIR 2010 SC 327, the Hon, ble Supreme Court has again deliberated upon this subject. This judgment was rendered subsequent to Chitresh Kumar (supra), though the citation speaks otherwise. The factual matrix of Gangula Mohan Reddy (supra) is like this ---, The appellant, who is an agriculturist had harassed his agriculture labour (servant) deceased Ramulu by levelling the allegation that he had committed theft of some gold ornaments two days prior to his death. It was also alleged that the appellant had demanded Rs. 7,000/- from the deceased which was given in advance to him at the time when he was kept in employment. The prosecution further alleged that the deceased Ramulu could not bear the harassment meted out to him and he committed suicide by consuming pesticides. The prosecution in support of its case examined the father of the deceased as P.W.1 Urikonda Jammanna in which he had stated that his son Ramulu was a farm servant and used to work at the house of the appellant. He also stated that the

appellant gave Rs. 7,000/- in advance to his son. PW1 also stated that about two years ago, the appellant had asked his son (Ramulu) that his wrist Page No.# 14/15 watch was missing from his house and harassed him on which his son had returned the watch to the appellant. PW1 in his statement stated that the appellant also levelled the allegation that the gold ear-rings were also missing from his house and the same were stolen by Ramulu. PW1 also stated that the appellant also demanded the advance of Rs. 7,000/- paid to Ramulu at the time of his employment. He further stated that Ramulu committed suicide because the appellant had levelled the allegation of theft of ornaments.

34. The Hon,ble Supreme Court reiterated its earlier view which was taken in Chitresh Kumar (supra) and held that -

The court dealt with the dictionary meaning of the word "instigation" and "goading".

The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.

35. The deceased Debajit Hazarika was a public servant. He devoted his life for public in general. He was a member of a political party also and was expecting to be a Member of the Legislative Assembly.

36. A public servant may command appreciation from the public. But he should also Page No.# 15/15 be ready to accept criticism. If somebody accuses a public servant of committing a criminal act, it is his duty to defend it. But the public servant committed suicide.

37. Under the aforesaid circumstances, this Court is of the opinion that the petitioners Smti. Porishmita Baishya Phukan @ Porishmita Phukan and Sri Dulal Bora who were arrested in connection with Sonari P.S. Case No.112/2024 no longer deserve to be detained in custody. Their bail applications are allowed. Both Smti. Porishmita Baishya Phukan @ Porishmita Phukan and Sri Dulal Bora shall be released on bail of 20,000/- each with sureties of like amount to the satisfaction of the learned Sub- Divisional Judicial Magistrate (M), Charaideo, Sonari.

38. Both the bail applications are disposed of accordingly.

Case diary shall be returned.

JUDGE Comparing Assistant