

GAHC010159142026



2026:GAU-AS:15291

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

Case No. : Bail Appln./2212/2026

AMRITPRAVA MAHANTA
D/O SHRI AJIT MAHANTA, R/O KAJIPARA, NALBARI, (BARNALI DANCE
ACADEMY), PS NALBARI, DIST NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE SPECIAL PP, ASSAM

Advocate for the Petitioner : MR. A K BHUYAN, MR. A KHOUND, N.R. SHARMA, MS. N
CHOUDHURY

Advocate for the Respondent : MR Z KAMAR, SPECIAL PP ASSAM,

-BEFORE-

HON'BLE MR. JUSTICE PRANJAL DAS

Advocate for the petitioner : Mr. A. K. Bhuyan, Sr. Adv
: Ms. N. Choudhury
: Mr. N.R Sharma

Advocate for the respondent : Mr. Z. Kamar, Sr. Adv. and Special PP
: Mr. P. Dutta

Date on which judgment is reserved : 07.10.2026

Date of pronouncement of judgment : 09.10.2026

Whether the pronouncement is of the

operative part of the judgment? : N/A

Whether the full judgment has been

pronounced? : Yes

JUDGMENT & ORDER (CAV)

1. Heard *Mr. A.K Bhuyan*, learned Senior counsel assisted by *Ms. N. Choudhury*, learned counsel and *Mr. N.R Sharma*, learned counsel for the petitioner. The prosecution is represented by *Mr. Z. Kamar*, learned Senior counsel-cum-Special Public Prosecutor assisted by *Mr. P. Dutta*, learned Assistant Special Public Prosecutor for the State.

2. In the later hours of 19.09.2025, news started coming in that legendary singer and cultural icon, *Zubeen Garg* had died in Singapore, where he had gone for a music festival. The news cast an overwhelming pall of gloom and distress over the people.

3. With regard to the sad demise of *Zubeen Garg*, one Ratul Borah from Morigaon in Assam lodged a complaint before the Morigaon police station, with the allegation that Shyamkanu Mahanta and Siddhartha Sharma along with others, after taking the singer to Singapore, had murdered him. Soon, many similar complaints came to be filed in different police stations of Assam. Eventually, the Director General of Police, vide Order dated **19.09.2025** bearing **Memo No. G/VI/Case**

Transfer/08/2021/440 directed for transferring such complaint, including the complaint at Morigaon PS, to the Crime Investigation Department (CID), Assam at Guwahati. Pursuant thereof, the said complaint was sent by the SSP, Morigaon to the CID at Guwahati, whereupon **CID PS Case No. 18/2025** was registered under section **61(2)/105/106(1)** BNS. A Special Investigation Team (SIT) was constituted to be led by the Chief Investigating Officer (CIO). Investigation started into the case, and after extensive investigation, a voluminous charge sheet was filed, sending up 7 (seven) accused persons for trial, including the present petitioner, *Amritprava Mahanta*.

4. The penal provisions given in the charge sheet against the petitioner are **u/s 3(6)/3(7)/3(8)/61(2)/103(1)/238** BNS. Subsequently, in the meantime, this Court, by Notification **No.HC.VII-50/2026/1712/A** dated **26.03.2026** constituted a Special Fast-Track Court for day-to-day exclusive trial of the case. The said exclusive Fast-Track Court, after the usual formalities pertaining to copies, etc., framed charges against all the 7 (seven) sent up accused persons, including the petitioner. The charges framed against the petitioner, *Amritprava Mahanta* are under sections **3(6)/3(7)/3(8)/61(2)/103(1)/238** BNS. It may be mentioned herein that charges have been framed against the petitioner as **A-4**, and therefore she will be referred to as **A-4** in this order.

5. The charges upon being read over and explained to the accused persons, were denied by them, whereupon, trial started against all the 7 (seven) accused persons, including *A-4*. It may be mentioned herein that as many as **394 witnesses** have been listed in the charge sheet to

adduce evidence on behalf of the Prosecution. The charge sheet is also accompanied by **373** number of documents to be adduced during the trial.

6. Considering the voluminous nature of the investigation materials, there is no doubt that the Chief Investigating Officer (CIO) and her team have worked very hard during the investigation.

7. The scanned copy of the TCR was called for from the Learned Trial Court and received with the up-to-date status of the case, which reveals that 121 prosecution witnesses have been examined. The scanned TCR was also sent in an electronic form by the learned Trial Court in a USB device. During the course of hearings, 3 (three) more witnesses came to be examined during the trial and copies of the said depositions were also made available to the Court.

8. The prosecution has also submitted before the Court a scanned copy of the charge sheet and case diary in multiple volumes, along with an electronic version of the same in a USB device.

9. In the first complaint lodged in Morigaon, as mentioned above, the present petitioner, *A-4* was not mentioned by name, though the informant referred to *other persons*. The petitioner *A-4* was arrested during the investigation. She was custodially examined by the Investigating Agency (CID) for a period of **14** days, and thereafter she was remanded to judicial custody, where she is in, at present. The petitioner *A-4* was arrested on **03.10.2025**; thus the petitioner has been in pre-trial and under trial detention since **03.10.2025** for a period of approximately **369** days.

10. Mr. *Bhuyan*, the learned Senior Counsel appearing for the petitioner *A-4*, submits that the petitioner has no criminal antecedents whatsoever. It is submitted that none of the statements of the crew members of the yacht are available as part of the investigation materials. It is submitted that there is no evidence whatsoever to show that the petitioner administered alcohol to the victim. The learned Senior Counsel submits that for an omission to be illegal, such omission has to amount to an offence provided by law. It is submitted that no witnesses have stated that the petitioner fed alcohol to the victim or was involved in conspiring to kill him. It is submitted that the charge-sheet is not based on relevant materials. It is submitted that the Captain of the yacht and Singapore police officials were not examined during the investigation. It is submitted that the bottle of whisky which was supposed to have been in the room of the deceased on the previous night was not seized. It is submitted by the learned Senior Counsel, after taking the Court through the various materials, that there are no incriminating materials against the petitioner, but she has been unnecessarily kept in jail since long. The learned Senior Counsel for the petitioner submits that though she has been prosecuted for conspiracy to commit the crime in Singapore, the necessary sanction as required for prosecuting offences committed outside India by an Indian citizen has not been taken. The learned Senior Counsel reiterates that the petitioner has no criminal antecedents, completely denies any involvement in the alleged offences, and in the event of being granted bail, she shall comply with all conditions and abide by the process of law.

11. In support of his contentions, the learned Senior Counsel,

appearing for the petitioner A-4, has referred to the following decisions:-

- (i) Col. Mohan Singh Versus State of Rajasthan*, reported in (1979) 4 SCC 11;
- (ii) John Pandian Versus State Represented by Inspector of Police, Tamil Nadu*, reported in (2010) 14 SCC 129;
- (iii) Raju Prasad Versus State Of Rajasthan*, reported in 2026 SCC Online Sc 1353;
- (iv) Dwipen Kr. Pathak Versus State Of Assam*, reported in (2013) 4 Gauhati Law Reports 98;
- (v) Sou. Vijaya V. State of Maharashtra*, reported in (2003) 8 SCC 296.

12. On the other hand, Mr. *Kamar*, the learned Senior Counsel, appearing as Special Public Prosecutor in this case has painstakingly taken the Court through the various materials on record. He submits that the petitioner was subjected to some changes in accommodation arrangements which she did not object. It is submitted that at the relevant time, A-4 was near the Captain of the yacht. It is submitted that as part of the conspiracy, A-4 was given the task to make the victim drink as much alcohol as possible. It is submitted by the prosecution that the victim suffered injuries also due to the supposed efforts of resuscitation. It is submitted that as per the medical and forensic report, the victim died of drowning, but the prosecution fairly submits that the forensic report did not reveal any poison in the viscera. It is submitted by the prosecution that such medical and forensic examination revealed high level of alcohol in the body of the deceased, though traces of medicines were in the therapeutic dose. It is submitted that finding of

such high level of alcohol in the body of the deceased proves the prosecution story that the petitioner fed alcohol to the victim. It is submitted by the prosecution that at this stage, the penal provisions of BNS would govern the matter. The learned Special P.P. submits that as per the prosecution case, the conspiracy was hatched in Assam itself and therefore, the commencement of the crime having been started in India, prosecution sanction for conspiracy is not necessary. It is submitted by the prosecution that two bail applications preferred by the petitioner before the learned Trial Court were already rejected, one before framing of charge and the other after framing of charge. It is submitted that the family members of the deceased were in the dark about the yacht trip, and that the petitioner along with others have been rightly charged by the learned Trial Court for the alleged offences.

13. In support of his submissions, the Prosecution cites the following decisions:-

(i) Shahzad Hasan Khan v. Ishtiaq Hasan Khan, reported in (1987) 2 SCC 684;

(ii) Ram Govind Upadhyay v. Sudarshan Singh, reported in (2002) 3 SCC 598;

(iii) State of U.P. v. Amarmani Tripathi, reported in (2005) 8 SCC 21;

(iv) Prasanta Kumar Sarkar v. Ashis Chatterjee, reported in (2010) 14 SCC 496;

(v) Kalyan Chandra Sarkar v. Rajesh Ranjan, reported in (2004) 7 SCC 528.

14. I have carefully perused the pleadings of the bail petition, and the annexed documents; the complaints filed in this case; the relevant portions of the case diary; the charge-sheet; the statements of the

witnesses recorded during investigation, both by police as well by learned Magistrates; the depositions of the witnesses during the trial; relevant documents and other such pertinent materials. I have considered the submissions of the learned Senior Counsel for the petitioner and the learned *Special Public Prosecutor* for the State/Prosecution. I have perused the decisions cited by the respective learned counsels in support of their respective contentions.

15. Before proceeding further, the statutory provisions may be looked at. Prior to the enforcement of BNSS, Section 439 CrPC governed the subject matter of bail to be adjudicated by Sessions Court or High Court for a person in custody. The relevant provisions of Section 439 CrPC as it existed may be reproduced herein below:-

“439. Special powers of High Court or Court of Session regarding bail.--

(1) A High Court or Court of Session may direct –

(a) that any person accused of an offence and in custody, be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified :

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

[Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.]

(1A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860).

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

16. The equivalent provision in BNSS is Section 483 and the said statutory provision may also be reproduced herein below:-

"483. Special powers of High Court or Court of Session regarding bail.-

(1) A High Court or Court of Session may direct,-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 480, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is

not practicable to give such notice:

Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under section 65 or sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

(2) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under section 65 or sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.

(3) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

17. Thus, the statutory provisions have remained by and large the same through the transition from CrPC to BNSS with regard to the subject matter of such bail.

DISCUSSION

18. Before proceeding further, some of the important principles of law laid down by the Hon'ble Supreme Court on the question of bail, especially bail for release from custody, may be revisited. Some of these decisions have also been cited by the learned counsels on both the sides.

18.1. The case of *Amarmani Tripathi* (supra) is one of the leading cases on the subject. This decision has been cited by the prosecution and it is relevant for all bail adjudication like the instant one. Referring to the earlier decision of *Kalyan Chandra Sarkar* (supra), the Hon'ble Supreme Court in *Amarmani Tripathi* (supra), enumerated some of the factors to be

considered for deciding the question of bail. The relevant parts of para 18 may be extracted herein below:-

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlaad Singh Bhati v. NCT, Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused...”

18.2. In the case of *Kalyan Chandra Sarkar* (supra), referred to above, the Hon'ble Apex Court enunciated relevant factors to be considered before grant of bail. Para 11 may be extracted herein below:

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of

conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.”

18.3. Similarly, in the case of *Ram Govind Upadhyay* (supra), the Hon'ble Apex Court enunciated an illustrative list of factors to be considered to decide the question of bail. Para 3 and 4 may be reproduced herein below:

”3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.”

”4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the

prosecution, in the normal course of events, the accused is entitled to an order of bail."

18.4. In the case of *Prasanta Kumar Sarkar* (supra), the Hon'ble Apex Court again enunciated the factors to be borne in mind while considering bail, and held that if relevant considerations are not taken into account and bail is granted mechanically, such an order would be erroneous. The relevant para 9 and 10 are extracted herein below:

"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail."*

"10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows: (SCC p. 290, para 13)

"13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in

such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”

19. A-4 along with A1, A2, and A3 have been charged with conspiracy to commit the murder of the victim *Zubeen Garg*, and that they succeeded in doing so.

20. The prosecution case is that the accused persons A-1, A-2, A-3, A-4 entered into a conspiracy to murder victim *Zubeen Garg*. That, in furtherance of such conspiracy, they took him to Singapore for a cultural festival. That, there he was fed a lot of alcohol. That, thereafter he was taken on a yacht trip to the sea where he was encouraged and incited to swim in the sea, even without life jacket.

21. The broad circumstances emerging from the prosecution story are that apparently during such swim in the sea without life jacket, the victim *Zubeen Garg* probably had a seizure attack as a result of which he partially sank in the water and in the process, ingested significant quantity of salt water from the sea leading to loss of consciousness. That, subsequently though he was brought to the shore and apparently tried to be revived, he could not be done so and eventually after being taken to Singapore General Hospital, *Zubeen Garg* was declared dead there at 5:13 PM Singapore Standard Time (2:43 PM Indian Standard Time) on 19.09.2025.

22. The Court is conscious of and alive to the fact that trial of the case is going on and has proceeded almost midway, and the present adjudication is one of determining the question of bail. Nevertheless, considering the fact that the charged offenses, including against A-4, are of heinous

nature, as rightly contended in the charge-sheet - there is no option but to see the *prima facie* case and other pertinent aspects - emerging from the materials with regard to the petitioner A-4.

23. With that perspective in mind, the court now proceeds to examine the materials to determine - at the end of this adjudication - as to whether the accused petitioner A-4 should be granted bail at this stage, as prayed for, or whether the accused petitioner A-4 should be continued to be kept in under trial detention at this stage.

Feeding alcohol to the victim

24. As per the prosecution case, the role attributed to A-4 in the conspiracy is that she was to feed sufficient alcohol to the victim *Zubeen Garg*, knowing fully well that medical advice had strongly talked about keeping him away from alcohol, and also in the context of his history of epilepsy and seizure.

25. Therefore, the statements of the witnesses recorded during investigation and the testimony of the witnesses recorded during the trial so far have to be seen in this perspective.

26. Upon perusing the statements of about 250 witnesses recorded by the investigation, the Court finds that none of the witnesses have stated about A-4 feeding, serving, pouring, administering, procuring, offering, or forcing alcohol upon the victim Zubeen Garg.

27. More specifically, out of the witnesses whose statements were recorded before learned Judicial Magistrates during investigation, no witness has stated that A-4 fed alcohol to the victim.

28. During the trial so far (*till the time of procuring of the scanned records & and its electronic form*), 121 PWs have been examined. I have perused the said testimonies.

29. Out of these witnesses, 118 PWs have not made any statements regarding A-4 that – she fed alcohol to the victim.

30. PW-10, *Birinchi Bora* made a statement in his testimony that singer *Zubeen Garg* was fed alcohol before going to the yacht trip. He did not name A-4. He stated that on 19.09.2025, he was in Nagaon. He stated that he had filed his FIR based on media reports.

31. PW-12, *Aabhijeet Sharma* stated in cross examination for A-4 that A-4 fed alcohol to the victim in the hotel and took him to yacht party. He further stated that he found this from the charge-sheet and according to him, as a common citizen; whatever is mentioned in the charge-sheet is the gospel truth. He also stated that the police did not inform him as to on what basis the Investigating Agency arrived at that conclusion. He also stated that the prosecution did not show him any material that A-4 had fed alcohol to the victim. PW-12 also stated that A-4, *Tonmoy Phukan* and *Abhimanyu Talukdar* provoked the victim for swimming. In cross-examination, he stated that he produced no materials to substantiate the same. He further stated that his FIR is based on media information. He also stated that he has never been to Singapore and on the day of the incident, he was at home.

32. PW-29, *Bishnu Sharma*, in his testimony during the trial stated in his examination-in-chief that they got to know that on the previous night of the yacht trip, the victim was heavily fed alcohol and that A-4 was involved

in feeding alcohol to him. In cross examination, he stated that he had no personal knowledge regarding the incident and he was in *Tezpur* at that time. He further stated that his FIR was based on news reports. He also stated that he did not mention these allegations or the name of *A-4* in the FIR lodged by him.

33. In the meantime, 3 additional PWs were examined, being PW-122 Tonmoy Phukan, PW-123 Sri Rup Kamal Kalita and PW 124 Sumit Barua. None of these PWs have stated that *A-4* fed or offered alcohol to victim *Zubeen Garg*.

34. I have perused the chain of custody documents collected during investigation. *None of these documents indicate or state that A-4 fed alcohol to the victim.*

35. Upon perusal of the *large number of relied-upon documents annexed with the charge-sheet, I find that none of the documents indicate or reveal that A-4 fed alcohol to the victim.*

36. The statement of witness Rupkamal Kalita was recorded by the investigating agency during investigation and he is mentioned as listed witness *LW-96* in the charge sheet. In his statement before police, he stated that Tanmoy had briefed them not to give alcohol to Zubeen as he might drink it. He goes on to say that A4 then told him that victim was given whiskey in the restaurant immediately before boarding the yacht before the witness arrived, and during the journey also, victim was given alcohol. The relevant paragraph may be extracted herein below:—

"We were briefed by Tanmoy to not to give any alcohol to Zubeen otherwise he would drink it. Amritprava told me that Zubeen Da was given whiskey in the

restaurant immediately before boarding the yacht before I arrived and during the journey also Zubeen Da was given alcohol."

37. This statement seems to indicate the conveying of caution by A-4 about the victim been already given alcohol that day, contrary to advice. If that so, it is incompatible with the prosecution story that her main task as a conspirator was to feed the victim alcohol.

37.1. In support of its argument that A-4 was involved in a conspiracy to feed alcohol to the victim, the prosecution has shown a WhatsApp communication between A-4 and Shekharjyoti Goswami. Some messages are exchanged between the two as revealed by the document. On the basis of these communications, the prosecution contends that A-4 was feeding alcohol to the victim. Without appreciating the said document in this bail adjudication, I have perused the communications which are in Assamese language in Roman script. From the said communication, no statement is noticed indicating that A-4 was feeding the victim alcohol.

38. In the statement of A-4 recorded before police, there are some references to the victim taking and being fed alcohol and about her sharing a drink with him.

39. However, any incriminating material in the statement of A-4 before police is prohibited from being taken into consideration, even for adjudication of bail. The law on this point is clearly laid down by the Hon'ble Supreme Court in the case of *P. Krishna Mohan Reddy Vs. State of Andhra Pradesh* reported in *2025 SCC OnLine SC 1157*, also relied upon by the defense. The relevant paragraphs 44, 45, 53 (i), (ii), (iii), (iv), (viii), (ix) are reproduced herein below:-

“44. We are conscious of a handful of decisions of this Court wherein it has been held that statements under Section 161 of the Cr. P.C. ought to be looked into by the courts in deciding the question of grant of bail. *Indresh Kumar v. State of Uttar Pradesh*, 2022 SCC OnLine SC 2411 observed that “statements under Section 161 of Cr. P.C. may not be admissible in evidence, but are relevant in considering the prima facie case against an accused in an application for grant of bail in case of grave offence”. Similarly, in *Salim Khan v. Sanjai Singh* reported in (2002) 9 SCC 670, it was held that the court is “duty-bound to consider all the statements recorded under Section 161 CrPC, examine the gravity of the offence and also examine the question of possibility of the accused tampering with the evidence and possibility of getting the attendance of the accused during trial and then would be entitled to grant bail to an accused”.

45. However, the aforesaid observations cannot be singled out and construed devoid of its context. While it is permissible for the courts to examine the statements recorded under Section 161 of the Cr. P.C. for the purpose of ascertaining whether a prima-facie case has been made out against the accused and the nature or gravity of the allegations, the same applies only insofar as such police statements are of witnesses and not accused persons.

53. From the above exposition of law, the following emerges:—

(i) A person who is accused of an offence or named in the first information report, can be examined by the police and his statement may be recorded under Section 161 of the Cr. P.C., as held in *Nandini Satpathy (supra)*.

(ii) A statement of an accused under Section 161 of the Cr. P.C., would ordinarily be of two kinds, it may be inculpatory in nature or may be exculpatory in nature.

(iii) An inculpatory statement again may be in the form of an admission or a confession. If such statement admits either a gravely incriminating fact or substantially all the facts which constitute the offence, respectively, as held in *Pakala Narayana Swami (supra)*, then it amounts to confession.

(iv) Where such police statement of an accused is confessional statement, the rigour of Section(s) 25 and 26 respectively will apply with all its vigour. A confessional statement of an accused will only be admissible if it is not hit by Section(s) 24 or 25 respectively and is in tune with the provisions of Section(s) 26, 28 and 29 of the Evidence Act respectively. In other words, a police statement of an accused which is in the form of a confession is per se inadmissible and no reliance whatsoever can be placed on such statements either at the stage of bail or during trial. Since such confessional statements are rendered inadmissible by virtue of Section 25 of the Evidence Act, the provision of Section 30 would be of no avail, and no reliance can be placed on such confessional statement of an

accused to implicate another co-accused.

.....

(viii) Where the police statement of the accused is an exculpatory statement i.e., it is neither a confession nor an admission, the statement being one under Section 161, would immediately attract the bar under Section 162 of the Cr. P.C., and the same may be used only for the very limited purpose provided in the Proviso for the purpose of contradiction or re-examination of such accused person alone, as held in Mahabir Mandal (supra). Even if such exculpatory statement of one accused, implicates another co-accused, the same cannot be taken into consideration against such co-accused, as there can be no credibility attached to an exculpatory statement of an accused implicating another co-accused, more particularly because it is neither required to be given on oath, nor in the presence of the co-accused, the same cannot be tested by cross-examination and the exculpatory nature of such statement militates against the foundational principle that permits taking into consideration a statement of one accused person against another co-accused as explained in Bhuboni Sahu (supra), i.e., 'when a person admits guilt to its fullest extent either to a certain incriminating fact or substantially all the facts which constitute the offence, and in doing so exposes himself and in the process other co-accused persons to the pain and penalties provided for the guilt, there exists a sincerity and semblance of sanction for the truthfulness of such statement'.

(ix) Although a handful of decisions of this Court such as Indresh Kumar (supra) and Salim Khan (supra) have held that statements under Section 161 of the Cr. P.C. ought to be looked into by the courts at the stage of anticipatory or regular bail for the purpose of ascertaining whether a prima-facie case has been made out against the accused and the nature and gravity of the allegations, yet the aforesaid rule only applies insofar as such statements under Section 161 were made by witnesses and not accused persons. A statement of an accused under Section 161 of the Cr. P.C. stands on a completely different footing from a police statement of a witness. As already discussed in the foregoing paragraphs, if the police statement of an accused is inculpatory in nature, its more in the form of a confession or admission rather than a statement, and the relevant provisions of Section(s) 17 to 30 of the Evidence Act, will apply with all its vigour. Where such statement of the accused is exculpatory in nature, the same can be looked into by the courts only for the limited purpose of either culling out the stance of the accused person qua the allegations or for contradicting the accused, if the accused chooses to be examined as a witness in terms of Section 315 of the Cr. P.C.. However, such exculpatory statement insofar as it implicates another accused person cannot be looked into by the courts, as such statements by their nature

cannot be tested by cross-examination if such accused person declines to be a witness in the trial in terms of Section 315 of the Cr. P.C., and because such exculpatory statement has no credibility as explained in Bhuboni Sahu (supra)”(emphasis added)

40. In view of the aforesaid settled position of law, such statements cannot be taken into account - either on a standalone basis or for any corroboration. In any case, in view of the bland statements of the other witnesses on this aspect of feeding alcohol to the victim, there is very little or almost nothing to corroborate as well.

41. Thus, though the prosecution has contended in the charge-sheet that A-4 was actively involved in feeding alcohol to the victim in furtherance of the conspiracy, but such finding in the charge-sheet do not find any support whatsoever from the materials of investigation, including the statements of the witnesses recorded during investigation. The same is also the case with regard to the 124 witnesses examined during the trial, so far.

Other Issues

42. From the projected circumstances, some of the important issues which emerge may be stated as follows:

- (i) Under what circumstances the victim *Zubeen Garg* went to Singapore?
- (ii) Under what circumstances the visa application of Garima Saikia Garg, wife of the victim, got rejected?
- (iii) Under what circumstances victim *Zubeen Garg* took alcohol between 17th and 19th September?
- (iv) Under what circumstances the yacht trip was planned?

(v) Under what circumstances victim *Zubeen Garg* went to swim in the sea?

(vi) Under what circumstances the victim *Zubeen Garg* went to swim in the sea the second time without a life jacket?

(vii) What are the facts and circumstances pertaining to any efforts made by the persons present and the authorities to give the victim prompt medical attention, and what were the rescue and medical efforts made to revive or save the victim?

(viii) What are the statements, if any, of any local Singaporean witnesses, including official witnesses, other than the NRIs from Assam?

43. However, in this present bail adjudication, some these issues have to be seen from the materials, mainly, with regard to A-4 only.

44. Thus, apart from the aforesaid basic issue of feeding alcohol, addressed above, now it has also to be seen as to what the materials speak regarding A-4 on the following questions / issues:

(i) Role of A-4 *Amritprava Mahanta* in organizing the Singapore trip

(ii) Role of A-4 in any room change arrangements

(iii) Role of A-4 in organizing the yacht trip

(iv) Role of A-4 in making victim swim

(v) Role of A-4 in the victim swimming without life jacket

(vi) Role / conduct of A-4 immediately after the projected swimming incident

45. As already mentioned earlier, during the trial so far, **124 PWs** have been examined. I have perused the said testimonies. Out of these witnesses, 118 PWs have not made any statements regarding A-4 that – *she had any role in the victim going to Singapore; she had any role in making any room change arrangements; she had any role in organizing*

the yacht trip; she had any role in the victim going to the sea to swim; she had any role in the victim going to swim the second time, without life jacket.

46. PW-10, did not make any statement about A-4 that - *she had any role in the victim going to Singapore; she had any role in making any room change arrangements; she had any role in organizing the yacht trip; she had any role in the victim going to the sea to swim; she had any role in the victim going to swim the second time, without life jacket.*

47. PW-12, Aabhijeet Sharma stated in cross examination for A-4 that A-4 fed alcohol to the victim in the hotel and took him to yacht party. He further stated that he found this from the charge-sheet and according to him, as a common citizen, whatever is mentioned in the charge-sheet is the gospel truth. He also stated that the police did not inform him as to on what basis the Investigating Agency arrived at that conclusion.

48. PW-12 also stated that A-4, *Tonmoy Phukan* and *Abhimanyu Talukdar* provoked the victim for swimming. In cross-examination, he stated that he produced no materials to substantiate the same. PW12 stated in his evidence that he has never been to Singapore. He also stated that the FIR lodged by him is based on media information.

49. PW-12 did not make any statements with regard to A-4 that - *she had any role in the victim going to Singapore; she had any role in making any room change arrangements; she had any role in organizing the yacht trip; she had any role in the victim going to swim the second time, without life jacket.*

50. In his testimony, PW-29 did not make any statement with regard to A-4 that - *she had any role in the victim going to Singapore; she had any role in making any room change arrangements; she had any role in organizing the yacht trip; she had any role in the victim going to the sea to swim; she had any role in the victim going to swim the second time, without life jacket.*

51. Across the statements of more than 250 witnesses who were examined during the investigation by police as well as before learned Judicial Magistrate, none of the witnesses have stated with regard to A-4 that - *she had any role in the victim going to Singapore; she had any role in making any room change arrangements; she had any role in organizing the yacht trip; she had any role in the victim going to the sea to swim; she had any role in the victim going to swim the second time, without life jacket.*

52. More specifically, out of the witnesses whose statements were recorded before learned Judicial Magistrates during investigation, no witness has stated with regard to A-4 that - *she had any role in the victim going to Singapore; she had any role in making any room change arrangements; she had any role in organizing the yacht trip; she had any role in the victim going to the sea to swim; she had any role in the victim going to swim the second time, without life jacket.*

53. I have perused the chain of custody documents collected during investigation. None of these documents indicate or state with regard to A-4 that - *she had any role in the victim going to Singapore; she had any role in making any room change arrangements; she had any role in*

organizing the yacht trip; she had any role in the victim going to the sea to swim; she had any role in the victim going to swim the second time, without life jacket.

54. Upon perusal of the large number of relied-upon documents annexed with the charge-sheet, I find that none of the documents indicate or reveal with regard to A-4 that - *she had any role in the victim going to Singapore; she had any role in making any room change arrangements; she had any role in organizing the yacht trip; she had any role in the victim going to the sea to swim; she had any role in the victim going to swim the second time, without life jacket.*

55. Thus, from the investigation materials and trial testimony so far, I have not found any materials whatsoever, with regard to A-4 that - *she had any role in the victim going to Singapore; she had any role in making any room change arrangements; she had any role in organizing the yacht trip; she had any role in the victim going to the sea to swim; she had any role in the victim going to swim the second time, without life jacket.*

56. The decision in *Kashmira Singh (supra)*, *Haricharan Kurmi (supra)* and *Karan Talwar (supra)* relied upon by the learned Senior counsel for the petitioner, pertain to admissibility or otherwise of the confession of a co-accused. However, in the instant case pertaining to bail, the Court is not looking at any such confession of co-accused. The question regarding the statement of the accused/petitioner has already been answered in *P. Krishna Mohan Reddy (supra)*.

57. The learned Senior counsel for the petitioner cites a recent decision of the Hon'ble Apex Court in SLP (Crl.) No. 9810/2026, where on the facts

of the case, the Hon'ble Apex Court was pleased to grant bail to the accused, observing that he had already undergone more than one year of incarceration and that the trial would take some more time to conclude.

Aspect of conspiracy

58. Conspiracy is basically an agreement to commit a crime. Though the proving of a written or express agreement is not essential, but the prosecution has to establish through direct or circumstantial evidence that there was meeting of minds. The decisive factor would be whether the accused consciously agreed to pursue unlawful object. In this regard, reference may be made to the decision of **CBI Vs. K. Narayana Rao** reported in **(2012) 9 SCC 512** wherein it was held that the essence of conspiracy is an agreement to do illegal act, which can be proved by direct or circumstantial evidence. However, suspicion and unsupported inference would not be sufficient. The relevant para 24 may be reproduced herein below:-

”24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from

such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."

(emphasis added)

58.1. Another decision on the subject is ***Baldev Singh v. State of Punjab, (2009) 6 SCC 564***. The relevant para is reproduced herein below:-

"17 It is now, however, well settled that a conspiracy ordinarily is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. While however doing so, it must be borne in mind that meeting of the mind is essential; mere knowledge or discussion would not be sufficient."(emphasis added)

58.2. Yet another decision on the subject is ***Yogesh v. State of Maharashtra, (2008) 10 SCC 394***. The relevant para is reproduced herein below:-

"25. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement....."(emphasis added)

59. Upon perusal of the materials collected by investigation in the form of statements of witnesses, documents etc., and upon perusing the

testimony of the witnesses who have adduced evidence during the trial, this court *prima-facie* is unable to find any material – indicating or attributing any overt or covert act to A-4 - in furtherance of the alleged conspiracy to murder the victim. No such incriminating statements, testimony or documents have been noticed.

60. Though the projected story of the prosecution is that conspiracy was hatched in Assam where A4 was also involved, but, from the materials of investigation and the trial testimony so far, no statement of witness, documents or suspicion in this connection has been noticed, either prior to departure or around the time of the incident or post incident. The *prima facie* case of A4 being involved in conspiracy to murder the victim is not made out from the investigation materials and trial testimony so far.

61. As per the prosecution story, the apparent motive for the crime is financial irregularities and misappropriation on the part of A-1, Siddhartha Sharma, who was the manager of the victim. The present accused-petitioner A-4 is stated to have done numerous musical / cultural shows along with the victim in the past. There are no allegations of financial wrongdoings against her. Therefore, it is perhaps a little perplexing about her allegedly sharing the aforesaid possible motive, with the main accused A-1 and others, in eliminating the victim to prevent his financial misdoings from coming to light. However, that question of motive if any, on the part of A-4 can be finally determined only by the learned Trial Court, at the end of trial.

Prima facie case

62. In the case of *Prasanta Kumar Sarkar* (supra), it has been held by the

Hon'ble Supreme Court that in bail adjudication, the Court is permitted to see as to whether the materials make out a *prima-facie* case against the accused. The said principle has been reiterated in other decisions as well. Thus, seeing the aspect of *prima facie* case in bail adjudication is also one of the principles of bail jurisprudence laid down by the Hon'ble Supreme Court.

63. Therefore, what would logically follow from such a principle of bail jurisprudence is that if the materials on record even fall short of making out a *prima-facie* case against the bail petitioner, the interest of justice would require that such a bail petitioner should be granted bail, by ending his/her under trial detention. Of course, the Court would be at liberty to impose suitable conditions to address legitimate concerns.

To put it alternatively, if the materials collected by investigation are scanty, insufficient and do not make out a *prima facie* case also, then inevitably, in terms of the settled laws, it would strengthen the case for not continuing the under trial detention of an accused.

64. Now, coming to the facts of this case, upon perusing the investigation materials and trial testimony so far, the Court is unable to find a *prima facie* case against A-4, with regard to alleged offence of conspiracy and murder of the victim.

65. Though the aforesaid factor might weigh in favour of granting bail to A-4; it is made clear however, that the lack of a *prima facie* case from the materials, as inferred by this Court herein, is only for the purpose of the present bail adjudication. The final determination of the question of guilt or otherwise is a subject of the on-going trial.

Investigation & Charge-sheet

66. In the charge-sheet, it has been stated that A-4 was one of the conspirators, who had conspired to murder the victim and that, in furtherance of such conspiracy; she fed alcohol to the victim on the previous night. The investigation materials vis-à-vis A-4 – in the form of statements before police, statements before Magistrates, documents etc., - have already been narrated in the preceding paragraphs. I have not found any statement or document whatsoever from the investigation materials, stating or indicating with regard to A-4 that – she fed alcohol to the victim; she had any role in the victim going to Singapore; she had any role in making any room change arrangements; she had any role in organizing the yacht trip; she had any role in the victim going to the sea to swim; she had any role in the victim going to swim the second time, without life jacket.

67. Therefore, in the considered opinion of this Court, the findings in the charge-sheet with regard to A-4, prima facie do not find support from the materials collected during investigation.

68. This is one of the factors that can be looked into by the Court, for bail adjudication, if such bail adjudication has come up after the filing of charge-sheet. And in the absence of such foundational support - as in this case with regard to A-4 - the same would also be a factor militating against continuance of the under trial detention of A-4.

Materials with regard to post incident conduct of A-4

69. It has also emerged from the materials that after the victim was

brought to the shore in an unconscious condition from the sea, A-4 along with some others made efforts to revive him. Some local Singapore officials on the yacht such as the captain are also stated to have made efforts at resuscitating him.

70. Witness Susmita Goswami in her statement recorded before learned Magistrate stated that after the victim was brought to the shore, A-4 along with two others were rubbing his palms and feet for about 10–15 minutes to keep them warm.

71. Another witness Siddhartha Bora in his statement before learned Magistrate stated that when the victim was being given CPR and revival efforts were on, A-4 was saying that the victim needed to take some tablet for epilepsy/seizure, and she searched the clothes of the victim if any medicine was there.

72. PW-123 *Rup Kamal Kalita* claiming to be eye witness stated in Para 29 of his trial testimony that when the news of victim's demise was conveyed back to the group waiting at Marina South Pier / hospital corridor, A-4 Amritprava Mahanta started crying aloud. The relevant Para 29 of the trial testimony of PW-123 *Rup Kamal Kalita* may be reproduced herein below:-

“29. Until that point, I thought that we have saved Zubeen Garg but approximately around 5:30 PM (SST), I heard Shekhar Jyoti Goswami, Amritprava Mahanta crying aloud, I asked Amritprava Mahanta what happened and came to know that Zubeen Garg is no more, he died at the hospital.”

73. PW-123 *Rup Kamal Kalita* also stated in Para 24 of his testimony that during the revival efforts on the victim, when A-4 Amritprava Mahanta thought that the victim was biting his tongue, she put two fingers in his

mouth. The relevant Para 23 and 24 of the trial testimony of PW-123 *Rup Kamal Kalita* may be reproduced herein below:-

“23. At that point I noticed Abhimanyu Talukdar and Sushmita Goswami trying to contact coast guard. Sushmita Goswami's phone got connected and she gave the phone to me. The coast guards were asking for the vessel number of the yacht for which I passed the phone to the helper of the yacht.

24. Around the same time, I heard Amritprava Mahanta loudly saying 'Dada Dada' as she putting her finger to the mouth of Zubeen Garg since he was biting his tongue. I asked for a spoon to the helper at the yacht. He gave me a tongue (chimta) instead.”

74. The statement of the said witness Rupkamal Kalita, a Singapore resident was also recorded by the Investigating agency during investigation and he is mentioned as *LW-96* in the charge sheet. In his statement before police, he stated that while Sandipon and the yacht assistant administered CPR, Amritprava (A-4) and Tanmoy rubbed the victim's hands. He also stated that A4 alerted others that victim was biting his tongue and inserted her two fingers into his mouth to keep the airway open, which prompted the witness to ask for a spoon to prevent injury. The relevant paragraph may be extracted herein below:—

"Then an assistant at the ship and Sandipon started giving the CPR. Tanmoy and Amritprava started to rub his hands and Shekhar was rubbing his toes. Then Amritprava said that Zubeen is biting his tongue and then Amritprava put her two fingers in his mouth. I then asked for a spoon as I had a cousin who was a patient of epilepsy and I was told to put a spoon in between to prevent her from cutting the tongue. Zubeen was alive at that time. Then he brought a chimta (tongs) to put in the mouth of Zubeen."

Some aspects of bail jurisprudence

75. Way back in the case of *State of Rajasthan v. Balchand*, (1977) 4 SCC 308, Justice Krishna Iyer had said that bail and not jail is the rule. The relevant para is extracted herein below:-

2. *The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.*

76. Apart from the continued relevancy of the said principle enunciated in 1977 itself, in the present times, the same can perhaps be interpreted to mean that the default mode in investigation and trial should be bail and pre-trial or under trial detention should be the exception.

77. Needless to say that despite the said principle, *bona fide* situations arise where accused persons become required to be arrested for various purposes during investigation. Even during trial, accused persons are sometimes required to be kept in detention for bonafide objectives. These factors and objectives have crystallized through the case laws laid down by the Hon'ble Supreme Court in various cases.

78. The Hon'ble Supreme Court has time and again been emphasizing upon preventing unnecessary arrests and, consequently, unnecessary detention prior to determination of the question of guilt.

79. The inevitable prejudice, to some extent at least, that is caused by arrest and pre-trial or under-trial detention is exacerbated when under-trials and convicts are kept in the same jail. Ideally, pre-trial and under-

trial detention should be in completely separate physical establishments.

80. The delicate balancing exercise that the criminal justice system has to do between rights of the accused and the competing interests of society and victims applies at almost all stages, including at the stage of bail.

81. Any temptation to use pre-trial or under-trial detention as a punishment should be resisted. Using under-trial detention or pre-trial detention as a punishment, in the long run, invariably damages the credibility of the criminal justice system. And therefore, for the long-term interests of the criminal justice system, using under-trial detention as punishment is always detrimental, apart from its highly prejudicial impact on human rights and constitutional values.

82. The gold standard of a good criminal justice system should be — effective investigation, minimum arrests, minimum pre-trial and under-trial detention, strong prosecution and healthy conviction rate in real crimes.

Some other aspects of the instant case

83. All life is precious, but the life of *Zubeen Garg* was extraordinarily precious for the whole community, the Assamese people, and the people of Assam. In the hindsight, perhaps it can be said that a person like victim *Zubeen Garg*, with his co-morbidities, should have had at least one personal caretaker or medical attendant 24 x 7 x 365, and the sole responsibility of that caretaker would have been to give him the medicines in time, and to ensure strictly that the medical protocol, stipulated by the doctors in Nemcare Hospital and Mumbai, is followed absolutely strictly. It would have been easier to fix responsibility also. Of course, now that, the

extraordinarily precious life has already been snuffed out, there is no use saying it.

84. When the victim, *Zubeen Garg*, was hospitalized in Nemcare Hospital, Guwahati and in Mumbai for his illnesses, he was treated by a team of doctors and upon discharge, a detailed medical protocol was stipulated. Some of the key ingredients of that medical protocol were:

- a) Abstaining from alcohol;
- b) Getting proper sleep;
- c) Not driving himself;
- d) Not going near fire;
- e) Not going near water;
- f) Take his prescribed medicines regularly, including the medicines prescribed for seizures.
- g) Physical and neurological assessments prior to undertaking any foreign travel or rigorous tours.

85. From the materials available at this stage, *prima-facie*, it appears that several of these protocols were violated. Thus, the victim, *Zubeen Garg*, consumed alcohol (*revealed from the post-mortem & forensic report*), went to swim in the sea, and perhaps forgot to take his medicines for seizures on the fateful day of 19th September, 2025. The final determination of any such violation of the protocols; whether any or more of the charged accused persons were responsible for the same; more importantly, whether the same would invite criminal liability - would be a matter of adjudication during the trial.

Special Bail provisions for women

86. The criminal procedure law in India makes special provision for bail with regard to women. In this regard, reference may be made to Section 437(1) proviso of the earlier CrPC and presently, Section 480(1) proviso of the BNSS. These provisions lay down that even in offences punishable with death penalty or life imprisonment, the Court, including the court of Judicial Magistrate, is empowered in law to grant bail, if the accused is a woman or sick or infirm. Whether the discretion to exercise bail in such a situation is exercised or not is another question. The said provision has not been declared to be discriminatory and constitutionally invalid by the Hon'ble Supreme Court, so far.

87. The relevant extract of Section 480(1) proviso BNSS is as follows:-

“480. When bail may be taken in case of non-bailable offence.-

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but less than seven years:

Provided that the Court may direct that a person referred to in clause (i)

or clause (ii) be released on bail if such person is a child or is a woman or is sick or infirm

.....” (emphasis added)

88. In this regard, a decision may also be referred – **Satender Kumar Antil v. CBI, (2022) 10 SCC 51**. The relevant paragraph may be reproduced herein below:-

“78. Section 437 of the Code empowers the Magistrate to deal with all the offences while considering an application for bail with the exception of an offence punishable either with life imprisonment or death triable exclusively by the Court of Sessions. The first proviso facilitates a court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm, as discussed earlier. This being a welfare legislation, though introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be. The power under Section 439 of the Code is exercised against an order rejecting an application for bail and against an offence exclusively decided by the Court of Sessions. There cannot be a divided application of proviso to Section 437, while exercising the power under Section 439. While dealing with a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intendment is the role required to be played by the court. We do not wish to state that this proviso has to be considered favourably in all cases as the application depends upon the facts and circumstances contained therein. What is required is the consideration per se by the court of this proviso among other factors.”

(emphasis added)

Decision

89. Upon perusing the entire materials on record available at this stage and giving my serious consideration to the matter, I come to the

considered opinion that **A-4 Amritprava Mahanta** should be granted bail at this stage for the following reasons:

(i) **Nature of the materials with regard to A-4** – *(absence of any real implications revealed from the statements of witnesses examined by police during investigation; statements of witnesses examined before learned Judicial Magistrate during investigation; statements of prosecution witnesses examined during the trial so far, the documents collected during investigation and adduced as part of the charge-sheet).*

(ii) **The materials so far, not even making out a prima facie case against A-4.**

(iii) **The findings of the charge-sheet not receiving support from investigation materials.**

(iv) **Progress of the trial** (124 PWs examined)

(v) **Length of her undertrial detention ever since her arrest on 03.10.2025.**

(vi) **Her being a woman** *[the special provision pertaining to woman in matters of bail envisaged under Section 480 (1) proviso BNSS {corresponding to Section 437(1) proviso CrPC}; and the same not being held to be constitutionally invalid; principle laid down in **Satender Kumar Antil** (supra)].*

(vii) **No previous criminal antecedents.**

90. Considering the nature of the materials found on record so far, with regard to **A-4 Amritprava Mahanta**, it would be a travesty of justice to deny her bail at this stage, especially when she has already undergone undertrial detention for almost a year now.

91. Society's sense of justice is undoubtedly of profound importance. Nevertheless, the courts of law have to primarily focus on 'legal justice'. In other words, the courts have no option but to go by the finding that is derived from the materials and evidence on record. Ideally, 'legal justice' and society's sense of justice should coincide; but, sometimes they can be at variance as well, with court – as part of its duty - going by legal justice, which might be different – temporarily or otherwise - from society's notion of justice in a particular case. A court has to be conscious of society's sense of justice, but cannot be captive to it. The court's legal and constitutional duty is to transform legitimate social aspirations into legal justice, but only through the process of law. It is the bounden duty of the courts to redress injustice, wherever it appears.

Order

92. Accordingly, the accused petitioner **A-4, Amritprava Mahanta**, is hereby allowed to go on bail of **Rs. 50,000/-** with 2(two) sureties of the like amount each to the satisfaction of the learned Trial Court.

93. The following conditions are imposed:

- (i) She shall cooperate with the remaining trial.
- (ii) She shall not hamper or tamper with evidence.
- (iii) She shall not try to influence any witnesses.
- (iv) She shall not inflict any self-harm.
- (v) She shall take precautions for her own safety.
- (vi) She will not go abroad without taking permission of the learned Trial

Court.

94. In case of violation of the bail conditions, the bail might be liable to be cancelled.

95. The **bail petition resultantly stands allowed.**

96. Original records, if any may be returned to the concerned.

97. It may be stated herein that whatever has been discussed, mentioned and stated in the preceding paragraphs is only for the purpose of adjudication of this bail petition. The same should not be taken to be expressing any opinion on merits of the case undergoing trial at the moment, either to the prejudice of the defence or the prosecution.

98. The bail petition stands disposed of on the aforesaid terms.

“.....and the melodies etched into the soul of a people will live forever.”

JUDGE

Comparing Assistant