

GAHC040008832026

2026:GAU-AP:768



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

Case No. : Crl.Petn./152/2026

Shri Kamin Taloh

Son of Shri Anand Taloh,
Village- Rani, PO/PS- Sille-Oyan,
East Siang District, Arunachal Pradesh.

....PETITIONER

Shri Anar Ali,
S/o- Lt. Akhali Shaikh,
R/o- Nararuvita Part IV,
PO/PS- Mererchar, Bongaigaon District,
Assam.

....ACCUSED

VERSUS

1. The State of Arunachal Pradesh,
Represented through the Public Prosecutor of A.P.

2. Shri Dujum Dulom,

Son of Lt. Lidu Dulom,
R/o- Sikarijo, PO/PS- Daporijo,
Upper Subansiri District, Arunachal Pradesh.

....RESPONDENTS

BEFORE

HON'BLE MR. JUSTICE BUDI HABUNG

Advocate for the Petitioner	: Mr. B. Picha, ld.counsel
Advocate for the Respondent	: Mr. T. Ete, ld. Addl.P.P., Resp. No.1. : Mr. L. Kurdu, ld counsel, Resp. No. 2.
Date on which Judgment is reserved	: 23.07.2026
Date of Hearing	: 23.07.2026
Date of Judgment and Order	: 11.08.2026
Whether the pronouncement is of the Operative part of the Judgment? :No	
Whether the full Judgment has been pronounced ? : Yes	

JUDGMENT & ORDER

(CAV)

Heard Mr. B. Picha, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State respondent No.1; and Mr. L. Kurdu, learned counsel for the respondent No. 2.

2. This application has been preferred under Section 483(1)(b) of the Bharatiya Nagarik Suraksha Sanhita, 2023, inter alia, praying for modification of

the bail conditions imposed upon the accused, namely, Shri Anar Ali, as contained in Paragraph No. 6 of the order dated 21.05.2026, passed by the learned Chief Judicial Magistrate, Daporijo, in Bail Application No. 23/26.

3. The case of the petitioner is that the accused, namely, Anar Ali, was arrested on 22.04.2026 in connection with Daporijo P.S. Case No. 43/25, registered under Sections 318(2) and 316(2) of the Bharatiya Nyaya Sanhita, 2023. Upon completion of the investigation, charge-sheet was filed on 01.05.2026, and the case arising out of said Daporijo P.S. Case No. 43/25 being G.R Case No.50/25 is presently pending before the learned Chief Judicial Magistrate, Daporijo.

4. By order dated 21.05.2026, the learned Chief Judicial Magistrate, Daporijo, directed release of the accused on bail upon his executing a bail bond of Rs. 2,00,000/- (Rupees two lakhs only) with one local surety for the like amount, besides imposing certain other conditions.

5. Mr. Picha, learned counsel for the petitioner submits that the accused is a simple mason/daily-wage earner and is unable to furnish the bail bond of Rs. 2,00,000/- (Rupees two lakhs only) and a local surety for the like amount. It is further submitted that the accused, being a resident of the State of Assam, is unable to arrange for a local surety. It is also submitted that the police authorities are insisting upon the accused to deposit the bail-bond amount in cash as a condition for his release. Consequently, despite having been granted bail, the accused continues to remain in custody as he has been unable to comply with the conditions imposed by the learned Chief Judicial Magistrate, Daporijo. Hence, the present application has been filed seeking modification of the conditions contained in Paragraph No. 6 of the order dated 21.05.2026.

6. Mr. Ete, learned Additional Public Prosecutor, fairly submitted that he does not oppose the prayer for modification of the bail conditions. He has also submitted that similar situations arise in different parts of the Districts in the State of Arunachal Pradesh from time to time and, therefore, an appropriate clarification may be issued to ensure that the amount mentioned in a bail bond or surety bond is not treated as an amount required to be deposited in cash before the police or the Court. In support of his submissions, learned Additional Public Prosecutor has relied upon the decisions in ***Gokul Das v. The State of Assam***, reported in **1981 CRI. L.J. 229**, and ***Santosh alias Santu v. State of Haryana***, reported in **2020 Supreme (P&H) 509**.

7. Mr. Picha, learned counsel for the petitioner has also placed reliance upon the judgment of the Hon'ble Supreme Court in ***Narayan v. State of Madhya Pradesh*** [arising out of SLP (Crl.) No. 7011/2026]. He submitted that Section 483(1)(b) of the Bharatiya Nagarik Suraksha Sanhita, 2023 empowers the High Court to set aside or modify any condition imposed by a Magistrate while releasing an accused on bail. Such power, according to learned counsel for the petitioner, is required to be exercised where a condition imposed while granting bail is found to be excessive or unduly onerous, or has the effect of rendering the order granting bail practically incapable of compliance or being availed of. The learned counsel for the petitioner further submitted that, in such circumstances, the imposition of such a condition would, in effect, amount to denial of bail.

8. Heard and considered the submissions advanced by the learned counsel for the parties and also perused the documents available on record.

9. In the present case, the accused was arrested on 22.04.2026 and, upon

completion of the investigation, charge-sheet was filed on 01.05.2026. The learned Chief Judicial Magistrate, Daporijo, upon taking note of the filing of the charge-sheet and upon consideration of the prayer for bail, found the accused entitled to be released on bail. Accordingly, the accused was directed to be released on bail upon execution of a bail bond of Rs. 2,00,000/- (Rupees two lakhs only) with one local surety for the like amount, subject to the other conditions imposed in the bail order dated 21.05.2026. The accused, however, has not been able to avail himself of the benefit of the said order on account of his inability to furnish the stipulated bail bond of Rs. 2,00,000/- (Rupees two lakhs only) and the local surety for the like amount. Thus, despite having been granted the concession of bail, the accused continues to languish in custody for more than three months. This fact, in itself, indicates that the conditions relating to the bail bond and local surety are excessive and onerous, particularly when the accused has been unable to make arrangements for the same.

10. The requirement of a local surety, in the facts and circumstances of the present case, also appears to be excessive and unduly onerous. The accused is stated to be a daily-wage earner working in the State of Arunachal Pradesh. The mere fact that the accused is a resident of another State cannot, by itself, constitute sufficient ground for insisting upon a local surety, particularly when such a condition has the effect of frustrating the very order granting bail. The purpose of requiring a bond or surety is to secure compliance with the conditions of bail and to ensure the presence of the accused during the investigation and trial. Such a requirement is not intended to impose a condition which is incapable of being complied with.

11. In view of the foregoing circumstances, the condition imposed by the

learned Chief Judicial Magistrate, Daporijo, requiring the accused to furnish a bail bond of Rs. 2,00,000/- (Rupees two lakhs only) with one local surety for the like amount, deserves to be modified. Accordingly, it is ordered that the accused shall be released on furnishing a personal bond of Rs. 50,000/- (Rupees fifty thousand only) with one surety for the like amount, to the satisfaction of the learned Chief Judicial Magistrate, Daporijo. The surety shall not be required to be a local resident. However, the surety shall be subject to verification of his/her identity and solvency in accordance with law.

12. As regards the alleged insistence upon deposit of the bail-bond amount in cash, learned Additional Public Prosecutor has rightly drawn the attention of the Court to Paragraph Nos. 14 to 16 of the judgment in ***Santosh alias Santu*** (supra), wherein, the distinction between execution of a bond and deposit of cash security has been considered. The said decision, relying upon the provisions of Sections 441 and 445 of the Code of Criminal Procedure, 1973 (corresponding to Sections 485 and 490 of the Bharatiya Nagarik Suraksha Sanhita, 2023), has also emphasized that insistence upon cash security as a condition for release on bail may render the grant of bail illusory. The relevant paragraphs are reproduced hereinbelow:-

"14. In Endua @ Manoj Moharana vs. State, 2018 (72) Orissa Criminal Reporter 611, the High Court of Orissa held as under:-

"Insistence of furnishing cash security has not been approved by the Court. Though in the absence of any specific prohibition or any statutory norms for exercise of judicial discretion for the matter of bail, it cannot be said that the Magistrate or Court, as the case may be, has no jurisdiction at all to impose cash security as a condition for bail. Such a

condition has been held by the Apex Court and different High Courts to be onerous, oppressive and virtually amounting to denial of bail. As per section 445 of Cr.P.C., it can be reasonably inferred that it is not the mandate of the Court that the Magistrate should insist on cash security in addition to personal bond with or without sureties.” A co-ordinate Bench of this Court in Runa Pasricha Rajpoot vs. State of Haryana, 2019(2) RCR (Criminal) 873, held that there is no provision in the Code of Criminal Procedure to deposit the amount in cash as a condition precedent for grant of bail and when a Court comes to the conclusion that a person is entitled to be released on bail, no condition other than those provided in Section 437(3) or 438(2) of Cr.P.C. can be imposed.

15. *On a perusal of the above judgments, it is clear that while granting bail under Chapter XXXIII of Code of Criminal Procedure, 1973, the provisions found therein have to be scrupulously followed by the Subordinate Courts. Section 441 of the Code of provides that before any person is released on bail or released on his own bond, a bond for such sum of money as the Court thinks sufficient shall be executed by such person. Section 441 of Cr.P.C. does not speak about deposit of any cash security. Only in certain contingencies, where the accused is unable to secure sureties for his release, he is permitted to deposit a sum of money or Government Promissory Note as the Court may fix in lieu of executing such bond, under Section 445 of the Code of Criminal Procedure.*

16. *Therefore, imposing condition of deposit of cash security alongwith execution of bond with two sureties is not permissible under law. Thus, the trial court has contravened the provisions enshrined under Section 445 of the Code of Criminal Procedure and on that ground alone, the order passed by it, in so far as the imposition of deposit of amount of*

Rs.50,000/- by way of cash security in concerned, is liable to be set aside.”

13. In the present case, it is pertinent to note that the learned Chief Judicial Magistrate, Daporijo, vide order dated 21.05.2026, has not specifically directed the accused to deposit the bail amount in cash. The condition imposed is for execution of a bail bond of Rs. 2,00,000/- (Rupees two lakhs only) with one local surety for the like amount.

14. It is necessary to clarify that a bail bond constitutes an undertaking or obligation undertaken by the accused in the amount specified in the bond, subject to the terms and conditions imposed by the Court. Mere specification of an amount in a bail bond does not, by itself, require the accused to deposit such amount in cash. Similarly, a surety bond constitutes an undertaking by the surety in respect of the amount specified therein and does not, merely by reason of such specification, require the surety to deposit the said amount in cash.

15. Accordingly, it is hereby clarified that the amount specified in a personal/bail bond or surety bond does not mean that a cash deposit is required to be made before the police or the Court merely for securing release on bail. The accused and the surety shall, however, be required to execute the requisite bonds in accordance with law. No authority shall insist upon the deposit of the bail-bond amount in cash merely because such amount is mentioned in the bail order.

16. Upon execution and acceptance of the requisite personal bond and surety bond, the concerned authority shall release the accused, Shri Anar Ali forthwith,

unless his detention is required in connection with any other case or proceeding.

17. The order dated 21.05.2026 stands modified to the extent as indicated above. The other conditions imposed by the learned Chief Judicial Magistrate, Daporijo, vide order dated 21.05.2026, shall remain unaltered. The application stands allowed in the above terms and is accordingly disposed of.

18. A copy of this order be communicated to the learned Chief Judicial Magistrate, Daporijo, as well as to the concerned Jail Authority and Police Authority for necessary compliance.

19. A copy of this order be also furnished to the Superintendent of Police concerned for information and necessary circulation amongst the police officers under his command for compliance.

JUDGE

Sabnam Meepo (SPA)