

GAHC010076142026



2026:GAU-AS:5620

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

Case No. : AB/804/2026

PAWAN KHERA
S/O- H. L. KHERA, PERMANENT R/O- D-12, 3RD FLOOR, NIZAMUDDIN
EAST NEW DELHI- 110013 AND PRESENTLY RESIDING AT H. NO. 8- 2-
601/1/E, ROAD NO. 10 BANJARA HILLS, HYDERABAD, TELANGANA, PIN-
500034

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR. K N CHOUDHURY, R MALI, MR. S U AHMED, MR R
SINGH, MD A RAHMAN, MR. A M AHMED, MR A W AMAN

Advocate for the Respondent : PP, ASSAM,

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner :	Dr. A.M. Singhvi, Senior Advocate and Mr. K.N. Choudhury, Senior Advocate.
For the Respondent:	Mr. D. Saikia, Senior Advocate and Advocate General, Assam.
Date of Hearing :	21.04.2026.
Date of Judgment :	24.04.2026.

O R D E R (CAV)

Heard Dr. A.M. Singhvi and Mr. K.N. Choudhury, learned senior counsels representing the petitioner. Also heard Mr. D. Saikia, Senior Advocate and the learned Advocate General, Assam.

2. This is an application under Section 482 of the BNSS, 2023, whereby the petitioner Shri Pawan Khera has prayed for pre-arrest bail in respect of Crime Branch P.S. Case No.04/2026 under Sections 175/ 3(5)/ 3(6)/ 318/ 336(4)/ 337/ 338/ 340/ 341(1)/351(1)/352/353/356 and 61(2) of BNS, 2023.

3. The petitioner Shri Pawan Khera is an Office Bearer of Indian National Congress. On 5th April, 2026, he attended a Press Conference at Guwahati. In that Press Conference, by showing some documents, Shri Khera claimed that Smti. Riniki Bhuyan Sarma, the wife of the Chief Minister of Assam holds Passports of Egypt, United Arab Emirates and of Antigua & Barbuda. Shri Khera also claimed that Smti. Riniki Bhuyan Sarma floated a company at Wyoming in the United States of America and also invested more than ₹50,000 crores.

4. In order to make those claims, Shri Pawan Khera had shown different documents, which he claimed, that those documents were collected by his associates.

5. Aggrieved by the accusations, Smti. Riniki Bhuyan Sarma had immediately lodged an FIR before police and past midnight, police registered the case. In her FIR, Smti. Riniki Bhuyan Sarma has claimed that she is an Indian citizen and she does not hold any passport of any other countries nor she has floated the company in the United States of America.

6. Dr. Singhvi has submitted that the Press Conference was held just before the Assembly Elections in Assam. According to Dr. Singhvi, the husband of Smti. Riniki Bhuyan Sarma belongs to Bharatiya Janata Party and Shri Pawan Khera belongs to the Indian National Congress. According to Dr. Singhvi, whatever Mr. Khera had done was

nothing but a political rhetoric aimed at the opposite party and at best, it might be a case of defamation.

7. Dr. Singhvi has submitted that after the said incident, the Chief Minister of Assam has been publicly threatening the petitioner Shri Khera and therefore, there is a possibility that he may suffer personal harassment if he is arrested by police.

8. In order to buttress his point, Dr. Singhvi has relied upon *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565. Paragraph 31 of the said judgment is quoted as under:

“**31.** In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and “the larger interests of the public or the State” are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in *State v. Captain Jagjit Singh* [AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216] , which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of

paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.”

9. Dr. Singhvi further relied upon a decision of the Supreme Court in *Satender Kumar Antil v. Central Bureau of Investigation and Another*, reported in *2026 SCC OnLine SC 162*. Paragraph 17 of the said judgment is quoted as under:

“**17.** An arrest, being an act done by a police officer in furtherance of an investigation, is discretionary and optional to be applied on the facts of a particular case. Section 35 of the BNSS, 2023 provides for situations where a person may be arrested by a police officer, without a warrant.

Section 35 of the BNSS, 2023

“35. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence; or

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

- (c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or
- (d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or
- (e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
- (f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or
- (g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
- (h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists,

of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(i) who, being a released convict, commits a breach of any rule made under sub-section (5) of Section 394; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of Section 39, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age.”

(emphasis supplied)”

10. The learned counsel Mr. K.N. Choudhury has supported the submissions of Dr. Singhvi. Mr. Choudhury has submitted that most of the sections under which the case was registered, are non-cognizable to police and perhaps that is the reason why the learned Chief Judicial Magistrate, Kamrup (M), Assam refused to issue a Non-Bailable Warrant of Arrest against the present petitioner. According to Mr. Choudhury, the acts committed by Mr. Khera in the Press Conference may have elements of a case of defamation only, not of any other offences.

11. The learned Advocate General Mr. Saikia has submitted that the petitioner has relied upon some documents to make those claims in the Press Conference. According to Mr. Saikia, Shri Khera had claimed that he has in his possession some documents on the basis of which he made those claims. Mr. Saikia submits that police has already detected that those documents are false documents and therefore, the petitioner Shri Khera is guilty of committing the offence under Section 339 of the BNS, 2023.

12. Mr. Saikia has relied upon a judgment of the Hon’ble Supreme Court that was delivered in *Sumitha Pradeep v. Arun Kumar C.K. and Anr.*, reported in (2022) 17 SCC 391. Paragraph 12 of the said judgment is quoted as under:

“12. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very

serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

13. I have given my anxious considerations to the submissions made by the learned counsel for both sides.

14. In this case, the petitioner Shri Khera had claimed that the accusations he had brought are based on certain documents, which he has in his possession. On the other hand, police claimed that those documents are already detected to be false documents. After filing of the case by the informant, the petitioner has not made any claims that the police had made fabricated claims that his documents are false. Now, the claim of the learned Advocate General that the case of the petitioner falls within the category of Section 339 of the BNS, 2023, seems to have force in it.

15. The husband of Smti. Riniki Bhuyan Sarma is in politics and is the Chief Minister of Assam. But Smti. Riniki Bhuyan Sarma is not in politics. If Mr. Khera had raised those accusations against the Chief Minister of the State, then the matter would have been a political rhetoric. But in order to gain political mileage, Mr. Khera has dragged

an innocent lady into the controversy. He has not yet proved beyond doubt that Smti. Riniki Bhuyan Sarma has passports of three other countries. He also has not yet proved beyond doubt that she had opened a company in the United States of America and invested a huge amount of money.

16. Mr. Khera while making those accusations, had claimed that his associates had collected those documents for him.

17. This Court is of the opinion that under the given circumstances, this case cannot be termed as a case of defamation simpliciter. There are materials for a *prima facie* case under Section 339 of the BNS, 2023 and the petitioner has been avoiding police investigation.

18. For the aforesaid reasons, this Court is again of the opinion that custodial interrogation is necessary in this case to find out who are the associates of Mr. Khera, who had collected those documents for him and how and from where they had collected those documents.

19. The accusations brought against the present petitioner appears to stem from motive of furthering the ends of justice. There are no materials in this case to suggest that the accusations brought against the present petitioner are intended to injure and humiliate the applicant/petitioner by having him arrested.

20. Under the aforesaid premised reasons, this Court holds that the petitioner Shri Pawan Khera does not deserve to be given the privilege of anticipatory bail. Accordingly, his prayer for pre-arrest bail is rejected.

The application for bail is disposed of accordingly.

JUDGE

Comparing Assistant