

GAHC010126222026



2026:GAU-AS:15874

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

Case No. : Bail Appln./1682/2026

SANDIPON GARG
S/O SHRI BIJU MOHAN BORTHAKUR, R/O HAJARI GAON, PS PULIBAR, PO
RRL, JORHAT, ASSAM

VERSUS

STATE OF ASSAM
REPRESENTED BY SPECIAL PP, ASSAM

:::BEFORE:::

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

For the petitioner	: Mr. A.K. Bhuyan, learned Senior counsel Ms. N. Choudhury
For respondent	: Mr. Z. Kamar, learned Senior counsel, Mr. K.K. Dutta
For the victim's family	: Mr. W.R. Medhi,

Date on which judgment is reserved : **13.10.2026**

Date of pronouncement of judgment : **16/10/2026**

Whether the pronouncement is of the: No.

operative part of the judgment ?

Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

Heard Mr. A. K. Bhuyan, learned Senior counsel assisted by Ms. N. Choudhury, learned counsel for the petitioner. Also heard Mr. Z. Kamar, learned Senior counsel and Special P.P., Assam, assisted by Mr. K.K. Dutta, learned counsel for the State and Mr. W.R. Medhi, learned counsel for the victim.

2. I have also considered the records, which, being voluminous, were also supplied through pen drives and part of which were produced as certified copies of the Trial Court Records, and were relied upon by both the contesting parties.

3. Zubeen Garg, the iconic singer, composer, lyricist, actor, filmmaker, and philanthropist, met with an untimely and unfortunate demise on 19th September 2025 in Singapore, by drowning in the waters off [Lazarus Island](#) and [St. John's Island](#) in Singapore when he went for a swim while partaking in a yacht ride. He had been invited to attend the 4th North East India Festival (NEIF), which was scheduled for September 20 and 21, 2025.

4. As news of the tragedy spread, speculations regarding the possible related circumstances arose and suspecting foul play, several complaints were lodged in

various police stations throughout the State of Assam, expressing suspicions and demanding probe and investigation. Most of the complaints so lodged indicated primary suspicion on Shyamkanu Mahanta, who was involved in NEIF as an organizer, Siddhartha Sharma, who was identified as the manager of Zubeen Garg and other persons who were identified as having accompanied the icon to Singapore.

5. The complaints were transferred to the Crime Investigation Department (CID), Assam, where one of the complaints, lodged by Ratul Borah at the Morigaon Police Station, was registered as CID Police Station Case No. 18/2025, and a Special Investigation Team (SIT), constituted for the purpose, conducted the investigation.

6. It is the assertion of the petitioner that he had been summoned to participate in the investigation on several occasions, and he had duly co-operated. However, the petitioner was placed under arrest on 8.10.2025, and his passport was seized. Upon completion of the investigation, the Final Form, in the shape of a chargesheet bearing Chargesheet number 14/2025 dated 12.12.2025, comprising 7 (seven) volumes, was submitted, sending up 7 accused for Trial, including the petitioner, who was arrayed as A-5. 394 witnesses have been listed in the charge sheet to adduce evidence on behalf of the Prosecution. The charge sheet depicts 373 documents to be relied upon during the trial.

7. The details of the charges leveled against the accused sent up for trial are as follows:

(i) Accused No. A1, Siddhartha Sharma, charged under Section 3 (6), 3 (7), 3 (8), 61 (2) R/W Section 103 (1) and substantive offences thereof, 61 (2) R/W Section 316 (5) and substantive offences thereof, of the BNS, 2023.

(ii) Accused No. A2, Shyamkanu Mahanta, under Section 3 (6), 3 (7), 3 (8), 61 (2) R/W Section 103 (1) and substantive offences thereof, 308 (2), 318 (4), 238 of the BNS, 2023.

(iii) Accused No. A3, Shekhar Jyoti Goswami, under Section 3 (6), 3 (7), 3 (8), 61 (2), R/W Section 103 (1) and substantive offences thereof, Section 316 (5), of the BNS, 2023.

(iv) Accused No. A4, Amritprava Mahanta, under Section 3 (6), 3 (7), 3 (8), 61 (2) R/W Section 103 (1) and substantive offences thereof, 238 of the BNS, 2023.

(v) Accused No. A5, Sandipon Garg, under Section 105 of the BNS, 2023.

(vi) Accused No. A6, Nandeswar Borah, under Section 61 (2) R/W Section 316 (5) and substantive offences thereof of the BNS, 2023.

(vii) Accused No. A7, Paresh Baishya, under Section 61 (2) R/W Section 316 (5) and substantive offences thereof, of the BNS, 2023.

8. Keeping in view the nature of the case, an Exclusive Fast Track Sessions Court has been constituted to ensure an effective and time-bound trial. Sessions Case no. 256/2025 was accordingly registered on the basis of the charge sheet. Charges were thereafter framed on 26.5.2026 against all seven accused, where

charges as proposed in the chargesheet against each accused respectively were framed, and the petitioner herein had been charged under Section 105 BNS, 2023.

Petition No. 25/2026, filed before the Learned Trial Court praying for grant of bail to the petitioner herein, had been rejected on 8.6.2026. The present bail petition has been preferred on 18.6.2026.

9. The petitioner claims to be a cousin of the deceased. He belongs to a middle-class family and was serving as a Deputy Superintendent of Police under the Assam Government. It has been stated on his behalf, and not contested by the prosecution, that the petitioner does not have any past criminal record. At the insistence of the deceased, he had accompanied him to Singapore and the expenses for the tickets and stay, etc., had been borne by the manager of the deceased.

10. The learned senior counsel appearing on behalf of the petitioner has submitted that there are eyewitnesses to the events leading to the unfortunate drowning of the deceased. He has further submitted that the present petitioner had not only attempted to save the life of the deceased by administering Cardiopulmonary Resuscitation (CPR) to the deceased, but he had also brought back the body of the deceased to his native place and handed over the same to the family of the deceased along with all his belongings.

11. The charge-sheet being voluminous, the learned Senior Counsel has drawn my attention to the relevant portion of the charge-sheet, at page 330 of the bail petition, where the specific allegations with regard to the present petitioner have been enumerated, which are quoted herein below for ease of reference:

A5

Sandipan Garg

- *Instigating Sekhar and thereby the victim to go in water of the sea to swim a long distance to the beach which was 226 metres to and fro;*
- *letting the victim jump in water in a state of dangerous intoxication despite sitting adjacent to him and being in a direct position to stop him;*
- *jumping in water late to save the victim only after some NRIs created hue and cry for the danger to the life of the victim;*
- *not saving the victim despite being near to him in water causing the ingestion of water by him;*
- *not calling the captain on time;*
- *being responsible for ingestion of sea water by the victim and for submergence of his nostrils and mouth in water among others.*

12. The Learned Senior Counsel had submitted that the petitioner, till the stage of rejection of the prayer for bail by the Learned Trial Court, was defended by the learned LADC since he could not afford an advocate at his cost.

13. The learned senior counsel has referred to the observations of the learned Trial Court recorded in the order dated 26.5.2026, under the heading of "Facts appeared from the material placed by the SIT with Charge sheet", more specifically to the contents of paragraph 123(xx) which are quoted below for ease of reference.

"123(XX) Accused A5 induced Late Zubeen Garg to go for second swim by saying "Taloj Jau Bola" (Lets go to touch the shore) knowing Late Zubeen Garg's weakness for swimming and health issue, accused A3 gave his consent saying 'lets go' "jau bola" (to go to touch the shore) then A3 moves and started swimming towards the direction of shore, then Late Zubeen Garg wanted to go, jumped into sea water. At this time deceased was highly intoxicated, in stuporous condition and completely exhausted state of health (digital evidence)."

14. He has submitted that the aforesaid observations are not correct, inasmuch as, when the PW no. 121 had been confronted, during the evidence stage at the trial, he had stated that the petitioner had stopped the deceased from going into the water. He has then referred to the contents of paragraph 141 of the order under reference, which is again quoted herein for ease of reference:

"141. A5 by saying "taloj Jau Bola" (lets touch the shore) to A3 instigate and

encouraged deceased to go for second swim in highly stuporous condition, he was present very close to deceased at that point of time, but he does not prevent deceased from second swim, not compelled him to wear jacket, digital evidence present with record not shown he was asking for life jacket or restraining deceased from going water by taking him to yacht after first swim, not disclosed other about health condition of deceased and digital evidence pointed he was having alcohol too in front of deceased having knowledge of the health condition of the deceased allowed him to swim in the sea water and thus pointed strong prima facie material against the accused A5 Sandipan Garg u/s 105 BNS."

15. He has submitted that in the earlier observations, the learned Trial Court had recorded that the Accused no 3 had proposed to swim to the shore, while in this observation, the said comment has been attributed to the petitioner herein.

This Court, however, notes that the said submission of the learned Senior Counsel is not correct, inasmuch as, on both occasions, the allegations of instigation have been attributed to the petitioner by the Learned Trial Court and not against A3, and therefore, the said submission of the learned senior counsel shall not receive any further consideration of this Court.

16. The learned senior counsel has thereafter referred to the order dated 8.6.2026, through which the learned Trial Court had rejected the Bail petitions filed by the accused, including the present petitioner. He has referred to paragraph 40 of the said order, which dealt with the rejection of the prayer for bail made by the petitioner. He submits that the learned Trial Court proceeded

on the premise that the petitioner was well acquainted with the health condition of the deceased and the inclination of the deceased for swimming and yacht activities, and yet he did not disclose the condition of the deceased to the organiser of the yacht tour. He has submitted that the learned Trial Court also proceeded on the erroneous premise that the petitioner had offered to swim to the shore and, when A3 gave consent, the deceased was incited to go for the second swim in stuporous condition without a life jacket, which finally led to his drowning and death. According to him, the Learned Trial Court again proceeded on the erroneous premise that the petitioner had made attempts to revive the deceased only after he had expired, and he had made no efforts to restrain the consumption of alcohol by the deceased or to restrain the deceased from going for a swim. The learned Trial Court had also erroneously rejected the plea that there is a possibility of delay in the Trial Proceedings. The learned Senior Counsel has submitted that unfortunately, the learned Trial Court had continuously proceeded on erroneous presumptions.

17. The learned senior counsel has then referred to the statement of one Debajyoti Hazarika, identified as PW 119(LW 83), who stated, in the statement recorded under Section 180 BNSS, 2023, that after the deceased had been brought onto the yacht, the captain of the yacht and the petitioner had administered CPR to the deceased. The learned senior counsel has submitted that none of the witnesses had stated that the petitioner had instigated the

deceased.

18. He then referred to the statement of one Prateem Lahkar, referred to as LW 72, who stated that he had seen the petitioner and the captain of the yacht administer CPR to the deceased. He also saw the petitioner give mouth-to-mouth resuscitation to the deceased. He has submitted that it would be evident that the petitioner was trying to save a life and not to take a life.

19. The learned senior counsel thereafter referred to the statement of PW 11 recorded during the Trial to emphasise that till the time the said witness was put to face cross-examination on behalf of accused no. 4 (Amritprava Mahanta), the digital evidence, on which much emphasis had been laid by the learned Trial Court while framing charges, had not yet been brought out of sealed cover. The order dated 12.6.2026 would reveal that the said prosecution document was allowed to be exhibited at the request of the defence. The sealed pack containing the pen drive was opened only on 12.6.2026. He has further submitted that when confronted with the video footage during the cross-examination, the witness identified it as a prosecution document and therefore, there could be no quarrel with the contents of the said video footage. The witness had stated that accused no. 3 had suggested swimming to the shore, and the petitioner was identified and seen as verbally restraining the deceased. This evidence, as per the learned senior counsel, is contradictory to the allegation that the petitioner had incited the deceased.

20. The learned senior counsel has referred to the statement of Tonmoy Phukan, who is described as PW-122 (LW87), and who has stated that the petitioner had administered CPR on the deceased.

21. The learned senior counsel has also referred to the statement of Siddhartha Barua (LW 91), who stated that the petitioner was asked to give mouth-to-mouth resuscitation to the deceased by the Coast Guard.

22. The learned senior counsel then referred to the statement of Rupkamal Kalita PW 123 (LW96) and the statement of Abhimanyu Talukdar PW 121 (LW 93) to buttress his submission that none of the witnesses had indicated any instigation by the petitioner.

23. The learned senior counsel then referred to the post-mortem report, termed as Autopsy report, dated 20.9.2025, issued by the Forensic Medicine Division, Health Sciences Authority, Singapore, which recorded the cause of death of the deceased as "drowning". He then referred to the toxicology report to submit that the blood of the deceased contained a very large amount of alcohol. He submitted that, as per the report, such a heavy concentration would lead to a comatose condition in an average person. He has submitted that the deceased was adapted to such levels since he was accustomed to alcohol consumption, to the extent that he had to receive medical assistance to achieve de-addiction.

24. With regard to the charges leveled against the petitioner for having committed the offence of culpable homicide not amounting to murder, as defined in Section 105 of the BNS, 2023, the learned senior counsel submitted that, in the absence of sustainable allegation of culpable homicide, there can be no assertion that the petitioner had committed the offence of culpable homicide not amounting to murder.

25. He has referred to the provisions of Section 100 of the BNS, 2023, which this Court also feels is relevant to quote at this point for convenience:

“100. Culpable homicide: Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was

not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1. A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2. Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3. The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born."

26. The learned senior counsel has submitted that in the absence of any allegation of the petitioner having committed an overt act, the offence of culpable homicide cannot be said to have been committed. He has argued that the provision requires the commission of an act, and does not bring into its fold any omission on the part of the accused.

27. The learned senior counsel has thereafter referred to the provisions of Section 105 of the BNS, 2023, to submit that for culpable homicide to be construed as not murder, the case has to fall within one of the 5 (five) Exceptions enumerated in the provisions of Section 101 of the BNS, 2023. He has submitted that the exceptions also require commission of an act and do not

provide for an omission to be taken into account.

28. He has submitted that for the petitioner to be charged with the offence punishable under the provisions of Section 105, BNS, 2023, the prosecution has to rely upon one of the exceptions enumerated in Section 101 of the BNS, 2023. He submits that the first four exceptions do not apply to the present case since there are no allegations of any grave and sudden provocation, nor are there any allegations of right of private defence; it is not a case of a public servant exceeding his powers, and further, the death was not a result of an act committed in the heat of the moment in a sudden quarrel.

29. He submits that the prosecution's attempt to rope in the petitioner under the provisions of exception 5 of Section 101 of the BNS would also not stand to reason since no consent of the deceased to risk his life has been alleged.

30. The learned senior counsel has thereafter referred to the provisions of Section 2(1) of the BNS, 2023, i.e. the definition of "act", which states that "act" denotes a series of acts as well as a single act.

He has then referred to section 2 (15), where "illegal" and "legally bound to do" have been defined as follows:

"Section 2(15): "illegal" and "legally bound to do".—The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit;

31. The learned senior counsel has submitted that the BNS, 2023 has defined the term “offence” in Section 2(24) to mean a thing punishable by the Sanhita. He has submitted that the term thing has to be understood to mean either the “commission” of an “illegal” “act” or the omission of an act which the accused was legally bound to do. He has submitted that neither has the commission of an illegal act been alleged nor the omission of an act which the petitioner was legally bound to commit has been alleged, and therefore, the ingredients of Section 105 of the BNS, 2023 are not attracted to the present case.

32. The learned senior counsel has submitted that the allegations leveled against the petitioner regarding non-disclosure of the medical condition of the deceased to the Singapore authorities, and the petitioner not having gone to save the deceased, were not duties which the petitioner was legally bound to discharge. It is another matter that the same may be termed as moral or ethical duties. He has submitted that the records, including the prosecution documents, reveal that the petitioner had verbally restrained the deceased from proceeding to the water, that he had gone into the water to save the deceased and that he had administered CPR to the deceased.

33. The learned senior counsel has relied upon the following citations :

1. *2006 (91) DRJ (DB), PRABHAT UPPAL V/S STATE (PARA 13-15,16,19):*

“13. The statement, read as a whole, shows that there was a suicidal pact between the

husband and the wife in furtherance whereof the wife-deceased consumed Tik-20. However, when the body felt uncomfortable and, in all likelihood, manifested a choking feeling, the deceased panicked. It was at this time, in order to prevent the deceased from creating a commotion and from screaming, did the accused try to gag her and applied pressure on her neck. However, this pressure was more than the deceased could bear, which resulted in her dying of asphyxia due to strangulation. The process of strangulation may have aggravated the reaction of the pesticides in the body of the deceased, causing her death, but it cannot be said that the appellant had the intent to cause death. It is a case where there was no premeditation - the deceased partook by swallowing a portion of Tik-20. The act of strangulation appears to be done in the heat of passion.

15. In these facts, to hold that the offence is 'murder' would be doing violence to the definition of 'culpable homicide amounting to murder'. The case would, at the highest, fall under Section 304 IPC. We are of the view that exception 5 to Section 300 IPC is attracted, which reads as follows:-

"Exception 5-Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent."

16. The deceased was indisputably over the age of 18 years. When the appellant told his wife, the deceased, that he wanted to put an end to his life, she also volunteered to do that. Then the deceased consumed Tik-20 and tablets of Calmpose. The appellant consumed 15 tablets of Calmpose. When the deceased felt suffocated, the appellant put his hand on her mouth, resulting in her death. From this, it is clear that Shama suffered death at the hands of the appellant with her own consent. PW-8 Dr. Parmod Kumar Sharma who had accompanied the parents of the deceased to her house on getting the information of the incident and had found her lying dead and accused lying unconscious does not claim to have noticed anything suggesting that the deceased had resisted

strangulation. That circumstance also shows that she had consented to the act of her husband.

19. In the result, we allow this appeal to the extent that the conviction of the appellant is altered from Section 302 IPC to Section 304 (Part I) IPC. Further, considering the circumstances in which the deceased lost her life and the mental state of the appellant, the sentence of imprisonment for life awarded to the appellant is reduced to the period already undergone. The judgment under challenge is modified accordingly and the appeal partially allowed. The appellant shall be set at liberty forthwith, if not wanted in any other case."

**2. 2026 SCC ONLINE SC 1353, RAJU PRASAD V/S STATE OF RAJASTHAN
(PARA 8):**

"8. Having heard the learned counsels appearing for the parties and having taken note of the fact that the appellant is in incarceration for more than 11 months and the trial is progressing, we see no reason as to why he should be kept in the continued confinement. To allay the apprehension of the prosecution, it would suffice to impose strict conditions for being enlarged on bail."

C. 2014(10) SCC 248, NARENDRA V/S STATE OF RAJASHTAN -PARA 14,15 AND

16

"14. Under Exception 5 to Section 300 IPC "culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent". To attract Exception 5 to Section 300 IPC, there must have been free and voluntary consent of the deceased person. The onus of proving consent of the deceased person is on the accused. Exception 5 to Section 300 IPC must receive a strict and not a liberal interpretation. In applying the said

Exception, the act alleged to be consented to or authorised by the victim must be considered by a close scrutiny. The court must in each case consider the evidence and the surrounding circumstances while considering the question of consent.

15. *In the present case, in our view, there are formidable circumstances discernible from the evidence which probabilise the defence version which are as under:*

(a) Deceased Nathi and the accused were in love and they were intending to get married. Since they belonged to the same gotra, their relationship was not accepted by the villagers and they objected to the same;

(b) About three months prior to the incident, Nathi and the accused left the village and lived together for about 10-15 days and thereafter Nathi returned to her matrimonial house;

(c) On 19-3-2003, the parents of the deceased went for work and PW 3 was also engaged in some events pertaining to Holi festival and Nathi was alone in the house;

(d) When the accused came to the house of the deceased, he was not armed; he had taken the sword from inside the room of the house;

(e) PW 3 nowhere stated that at the time of the incident his sister quarrelled with the accused. When the accused inflicted sword-blows, deceased Nathi had not raised any alarm nor shouted for help;

(f) The accused was also having the stab injuries on his person.

In the present case, the accused has taken the defence plea of suicide pact even in the Trial Court while being questioned under Section 313 CrPC. The defence version is probabilised by the above facts and circumstances of the case. The death of the deceased was not premeditated and the act of the accused causing death of Nathi, in our view, appears to be in furtherance of the understanding between them to commit suicide and the consent of the deceased and the act of the accused falls under

Exception 5 to Section 300 IPC. Since the accused intentionally caused the death, the appellant is found guilty under Section 304 Part I IPC. The appellant is stated to be in custody for more than 10 years.

16. *In the light of the foregoing discussion, the conviction of the appellant under Section 302 IPC is modified and the appellant is convicted under Section 304 Part I IPC and sentenced to undergo imprisonment for the period already undergone by him and the appeal is allowed in part. The sentence of imprisonment for conviction under Section 309 IPC is ordered to run concurrently. The appellant is in jail, and he be released forthwith if not required in any other case."*

D. 1957 SCC ONLINE PAT 129, DASRATH PASWAN vs. STATE OF BIHAR (PARA 20,24,25,26 AND 27):

“20. *The fact that the appellant was arrested with bloodstained clothes when he was running away from his house after the occurrence points amply to the guilt of the appellant. This is a circumstance which corroborates his confession. The circumstances under which the dead body was found lying in the house are also significant. It is clear from the evidence that before the assault the deceased had spread a bed on the floor and lay there coolly with some clothes below her head used as a pillow. It was in that condition that she suffered herself to be killed. She does not appear to have made any attempt to prevent the assault. These are circumstances which point to the conclusion that she had allowed herself to be killed pursuant to a pact between herself and her husband.*

24. *The question next is what section is applicable to this case. Learned counsel has urged that the learned Sessions Judge was in error in holding that the offence of the appellant came within the purview of section 302 of the Penal Code, 1860. He has*

submitted that it is essentially a case where the learned Sessions Judge should have held that the section applicable was the first part of section 304 of the Penal Code, 1860. In support of this contention learned counsel has relied upon Exception 5 of section 300 of the Penal Code, 1860 which provides as follows:

“Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”

25. *It is undisputed that the deceased was above the age of 18 years and that she had suffered death with her own consent. The learned Additional Standing Counsel, however, contended that the consent in the present case was obtained by putting pressure upon her. This pressure, learned counsel explained, was the communication by the appellant to his wife that he had decided to end his own life. It was argued that it was the prospect of widowhood and all that it meant which prompted the unfortunate woman to agree to suffer death at the hand of her husband. In my opinion the contention of the learned Additional Standing Counsel cannot be accepted. Section 90 of the Penal Code, 1860 lays down as follows:*

“A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception.....”

26. *It cannot be reasonably urged in the present case I that the deceased gave the consent under fear of injury or under a misconception of fact. I am, I therefore, of the view that the defence contention is well-founded. I, therefore, alter the conviction of the appellant to the first part of section 304 of the Penal Code, 1860.*

27. Having regard to the extraordinary nature of this case the question arises what sentence should be imposed upon the appellant. Without attempting to minimise the gravity of the offence I feel that there are circumstances in this case which should go into the scales in favour, of a moderate sentence. The appellant, an immature youngman, was suffering from inferiority complex, the central idea of which was disbelief in himself. His morbid mind was equalled only by the sentimentalism of his young wife. The loss of a devoted wife has already been a great punishment to him. I, therefore, take a lenient view of the case and sentence the appellant to 5 years' rigorous imprisonment. Subject to this modification the appeal is dismissed."

**E. KANHA @ KANHAIYA SINGH V/S STATE OF MADHYA PRADESH & ANR
DATED 23.09.2026 (SLP. NO. 9810/2026) (PARA 13-14)**

"13. We are of the view that Courts should refrain from imposing the personal views or value judgment of the Presiding Judge on morality or otherwise while adjudicating a matter relating to bail, or even a criminal trial of an accused.

14. Insofar the present case is concerned, we find that appellant has already undergone more than one year of incarceration. It would take some more time for the trial to conclude. In such circumstances, we are of the view that a case for bail is made out."

**F. Order dated 9.10.2026 passed by a coordinate bench of this Court in
B.A 2212/2026 AMRITPRAVA MAHANTA V/S STATE OF ASSAM.**

34. The learned senior Counsel has prayed for grant of the privilege of bail to the petitioner during the remainder of the trial.

35. Resisting the prayer for grant of bail, the learned Special Public Prosecutor, Senior Advocate Mr Ziaur Kamar, has opened his arguments by submitting that the basic case of the prosecution is that two persons had conspired in Assam to ensure that the deceased would travel to Singapore, where he would be fed excess alcohol, whereafter he would be taken on a yacht trip, where he would go for swimming and other activities, and an untoward incident may happen. He has submitted that the present petitioner, who is admittedly the cousin of the deceased, knew about his medical conditions and still allowed him to go swimming during the yacht trip. The organizers of the yacht trip were not aware that the deceased was suffering from medical conditions due to which he was required to refrain from consuming alcohol and entering water to swim. The deceased was lured to go into the water despite the knowledge of the petitioner, and therefore, he has been charged.

36. The learned Special PP has referred to the Investigation Report, where at page 196 of volume 7, analysis of the evidence against the petitioner had been made, which is in the following words:

*“ANALYSIS OF THE EVIDENCE AGAINST SANDIPON GARG AND THE CHARGE IN FIR
18/2025*

1) On 17th September, 2025. Sandipon Garg left Guwahati accompanying Zubeen to NEIF, Singapore.

2) Sandipon took earned leave w.c.f. 14.09.2025 to 28.09.2025 from the Home Department, Govt. of Assam (D. No..).

- 3) *His travel arrangements were made by Shyamakanu Mahanta.*
- 4) *Sandipon being the cousin brother of Zubeen and being briefed by Garima Garg, had the knowledge that Zubeen is a patient of epilepsy.*
- 5) *He was a constant companion of Zubeen in Singapore except for the time when he was in room along with Amritprava Mahanta.*
- 6) *He was a witness to the fact that Zubeen was being fed an excessive quantity of alcohol. Shyamkanu had given a bottle of BLACK & WHITE whiskey in front of him and he was aware that Zubeen was being fed huge quantities of alcohol by Amritprava Mahanta, Shyamkanu and Siddharth Sharma in collusion.*
- 7) *While returning from CLARKQUAY on 18.09.2025 he was with Shekhar and Siddharth Sharma when Amritprava had informed Shekhar through a whatsapp message that there is some quantity of whiskey left in the bottle of BLACK & WHITE WHISKEY given by Shyamkanu giving a clear inference that Zubeen had consumed substantial quantity of whiskey from the bottle given by Shyamkanu to him.*
- 8) *During the yacht journey also, he witnessed that Zubeen was being fed alcohol immediately before swimming in the sea.*
- 9) *Sandipon was the first to go in the water at the sea to do swimming activities along with Shekhar and Siddharth Sharma.*
- 10) *This act of Sandipon incited Zubeen to swim in the sea despite the fact that he was in a stuporous condition and was incapacitated to swim.*
- 11) *When Zubeen finally went into the water to swim, Sandipon went around Zubeen only on being prodded by the NRI members who were concerned that Zubeen seemed to be completely exhausted putting his life in danger.*
- 12) *Despite having the knowledge that Zubeen had been fed an excessive amount of alcohol and in that state it is dangerous for him to do swimming in the sea and the fact that there is an advisory by the medical experts that being a patient of epilepsy,*

Zubeen should always be kept away from water activities and alcohol; Sandipon made no efforts to ensure safety of Zubeen by putting a life jacket on Zubeen and taking him inside the yacht after he was rescued from the water when he had opened his jacket while swimming for the first time despite his exhausted, fatigued, sleep deprived, fasting, stuporous bodily condition.

*13) Not only that, Sandipon, disregarding all these risks, further asks Shekhar in front of Zubeen, to go to the beach of the island in the front. Following is the certified transcript of the video:DFS/CF/362_25-H3_ReportEXTRACTION_FFS.zip/
root/private/var/mobile/Media/DCIM /104APPLE/IMG_4215.*

MOV

Sandipon: "shekhar da beachole bolok."

Shekhar: Cholo, tate jau bola.

Sandipon: Jaba?

Shekhar: Bola

Zubeen Garg: Jabi neki?

- 1. This instigated Zubeen to swim across the sea to go to the beach of the Island in front. Zubeen had said: Jabi niki?*
- 2. Thus, the action of Sandipon had the effect of instigating Zubeen to go and swim in the sea in the stuporous condition which was dangerous to his life.*
- 3. Also, when Zubeen finally jumped into the water. NRIs again prodded Sandipon to swim alongside Zubeen so that his life could be saved from the dangers of drowning.*
- 4. Sandipon also did not reveal to the NRIs on the yacht that Zubeen is a patient of seizure and has also been fed a huge quantity of alcohol and hence making him swim in the sea was extremely dangerous to his life which is likely to cause his death.*
- 5. It is also to be noted that SandiponGarg is a trained Police Officer and hence had the complete knowledge of the fact that swimming of Zubeen in the sea in a stuporous*

condition with a recurrent history of epilepsy would be so dangerous that it would likely cause death of Zubeen.

- 6. Hence, based on the evidence, it is evident that Sandipon Garg is liable to be prosecuted for the offence committed U/S 105 of the Bharatiya Nyaya Sanhita, 2023.*
- 7. Sandipon Garg, who has been arrested in connection with the case, committed the offence while he was not doing the discharge of his official duties, and he was on Earned Leave and Ex-India Leave, in Singapore. The leave was granted vide No. eCF No.402572/56 dated 19.06.2025 by the Department of Home and Political, Government of Assam*
- 8. During investigation, the details of earned leave/ ex India leave was sought and was later communicated vide No. eCF-680414/82 dated 19.11.2025 by the Department of Home and Political, Government of Assam, that Sandipon Garg, APS (U/S) IC CDSP, Boko, Chaygaon Kamrup district, was on Earned Leave/ Ex-India leave which was granted by the competent authority that is the Department of Home and Political, Government of Assam.*
- 9. Section 218 BNSS states that previous government sanction is required before a court can take cognizance of an offence allegedly committed by a public servant in the discharge of their official duties.*
- 10. A legal opinion was sought from the Advocate General, Assam on the necessity of taking the prosecution sanction for Sandipon Garg in the instant case under section 218 of the BNSS and opinion came in the negative (D266).*
- 11. The sanction for prosecution U/S 208 BNSS has already been granted against Sandipon Garg by the Ministry of Home Affairs vide No. 09/24/2025-Judl.Cell-11, Government of India, MHA, Judicial Wing, J-II Section, New Delhi dated 18.11.2025.*
- 12. Prosecution Sanction U/S-208 of the Bharatiya Nagarik Suraksha Sanhita, 2023, against Sandipon Garg in Crime No-18/2025 Dated-20-09-2025. CID Police Station,*

Assam, was given by Judicial Wing/J-II Section Ministry of Home Affairs. Government of India dated 18th November 2025, which was forwarded with a covering letter addressed to the Addl. Chief Secretary, Home and Political Dept. Govt. of Assam. The same was forwarded to Shri MP Gupta, IPS, Spl. DGP, CID, Assam, vide memo no-721846/4 dtd-19-11-2025.

13. The prosecution sanction proposal was sent to MHA vide letter no-721846/2-A dtd-12-11-2025, by Addl. Chief Secretary, Home and Political Dept. Govt. of Assam. For this a letter was written by Dr. Rosie Kalita, APS, CIO vide letter No-CID/Cell-XVI/CID PS Case No-18/2025/3520 dtd-12-11-2025. to Sri G Parthasarathi, IAS. Joint Secretary Judicial, MHA (Through Home Dept. Govt of Assam) to forward the proposal seeking prosecution sanction U/S-208 BNSS. A letter was written by Dr. Rosie Kalita, APS, CIO vide letter No-CID/Cell-XVI/CID PS Case No-18/2025/3521 dtd-12-11-2025, to Sri MP Gupta, IPS, Spl. DGP, CID, for the same. The proposal was forwarded by Sri MP Gupta, IPS. Spl. DGP, CID, to Ajay Tewari, Addl. Chief Secretary, Home and Political Dept. Govt of Assam. G Parthasarathi, IAS, Joint Secretary Judicial, MHA (Through Home Dept. Govt of Assam) (D251) (LW287)."

37. The learned Special P.P., in the course of his submissions on 06.10.2026, has contended that the petitioner was privy to the fact that the deceased was a patient of epilepsy and that, despite such knowledge, the deceased was fed an excessive quantity of alcohol, which was administered by Shyamkanu Mahanta. According to the learned SPP, the chain of events would show that a conspiracy need not always be direct and can also be inferred from the circumstances, being a conspiracy of mind.

38. It has further been submitted that the deceased was made to consume alcohol immediately before swimming in the sea, and that the act of the petitioner in making statements such as “let’s go” had the effect of instigating the deceased to engage in water activities, which were strictly cautioned against by the medical advisories.

39. The learned SPP has also submitted that the petitioner made no effort to ensure the safety of the deceased, such as insisting the deceased to wear a life jacket or preventing him from going for the second swim, when the deceased was already in an exhausted, fatigued, sleep-deprived, fasting and stuporous bodily condition.

40. It has been submitted that the petitioner also did not reveal to the NRIs on the yacht that the deceased was a patient of seizures and had been given alcohol, and therefore, the conduct of the petitioner had the effect of instigating the deceased.

41. During the arguments, the learned SPP had submitted that the present petitioner may not have been a part of the original conspiracy; and therefore the allegations against him are to the extent that he did not discharge duties cast upon him, which led to the untimely demise of the deceased.

42. The learned Special P.P. advanced the further submission that an omission

had been committed by the accused, inasmuch as they did not prevent the deceased from doing acts contrary to the medical advisories, which were required to be followed. According to him, the petitioner had gone to Singapore with the deceased as a member of his family, well knowing the medical condition of the deceased, and the failure to prevent the deceased from consuming alcohol and entering the water amounts to an omission within the scope of the charge under Section 105 of the BNS, 2023. The duty in which the petitioner failed arose from the voluntary assumption of care. The petitioner accompanied the deceased abroad as a family member who knew of his epilepsy, and he was part of the group that kept him in that setting. There was, therefore, a duty cast upon the petitioner to protect and safeguard the deceased, the petitioner being a trained public servant. He has further submitted that knowledge, as referred to under section 105 of the BNS, 2023, need not be certain and it is enough that he knew death was a likely consequence. The fact that the petitioner had knowledge of epilepsy, of excessive consumption of alcohol, of fatigue, exhaustion and stupor, and still incited the deceased for a second swim without a life jacket, supports that inference at this stage.

43. The learned Special Public Prosecutor has thereafter referred to the order dated 26.5.2026 passed by the Learned Trial Court, framing charges against the present petitioner and the other accused. He has submitted that, for an act to

attract the provisions of Section 105 of the BNS, 2023, the accused can either act with the intent to do an act which led to death, or he may do an act with the knowledge that it may lead to death. In the present case, according to the learned SPP, the petitioner had known that the deceased was a patient of epilepsy, and that he was not supposed to consume excessive alcohol and that he ought not to swim, but the petitioner had failed to prevent the deceased from doing so.

44. The learned Special P.P. has submitted that while framing charges against the petitioner and other accused, the transcript of the digital evidence, available at volume 3 of the Investigation report, had been taken into consideration and therefore, according to the learned SPP, the submission of the learned counsel for the petitioner that the digital evidence had been opened at the evidence stage and therefore, there could not have been any occasion for the learned Trial Court to refer to "digital evidence" at the stage of framing charges, does not hold any water and does not deserve any further consideration of this Court. The learned SPP has submitted that the contention of the petitioner that the PW 11 had, in his cross-examination, stated that the suggestion to swim to the shore was given by A-3 and not by A-5, does not come to the assistance of the petitioner since the said PW 11 was not at the place of occurrence but was in Assam at the time of occurrence and therefore, his opinion would not be of any consequence.

45. The learned Special P.P. has then referred to the evidence of PW 117, who stated that the petitioner, along with two others, called the deceased into the water for swimming. He has also referred to the evidence of PW 121, who stated that the petitioner was present immediately after the bottle of whiskey had been handed over to the deceased on the night prior to the unfortunate incident. He submits that, therefore, the petitioner knew that the deceased had been given the bottle of alcohol.

46. Continuing the rebuttal of the submissions made on behalf of the petitioner, the learned SPP has submitted that the plea of absence of any overt act is misconceived, as it attempts to isolate individual omissions from the entire sequence of events. According to him, the petitioner was a constant companion of the deceased, was present when the bottle of whiskey was handed over to the deceased, was the first to enter the water and, as stated by PW 117, called the deceased into the water. Such conduct, taken together, is a series of acts and omissions, and the definition of "act" in Section 2(1) of the BNS, 2023 itself takes in a series of acts.

47. The learned SPP has submitted that the statements of PW 119, LW 72 and LW 91, on which the learned senior counsel has relied for the administration of CPR, were recorded under Section 180 BNSS. and are not substantive evidence. He has further submitted that, even otherwise, the administration of CPR relates only to the conduct of the petitioner after the deceased had been brought out of

the water, that it does not efface the earlier conduct, and that the learned Trial Court, in its order dated 8.6.2026, has recorded that the attempts to revive the deceased were made only after he had expired.

48. As regards the submission that none of the witnesses has spoken of instigation, the learned SPP has submitted that the same stands answered by the evidence of PW 117 and by the transcript of the digital evidence, and that instigation can be inferred from words as well as from conduct and does not require the use of physical force.

49. The learned SPP has also submitted that the contradictions pointed out on behalf of the petitioner, including those arising from the cross-examination of PW 11, are matters of appreciation of evidence to be tested at the trial, and that this Court, while considering a prayer for bail, need not conduct a mini-trial. He has further submitted that charges have been framed, the petitions under Section 250 BNSS, 2023 have been rejected, and the prayer for bail of the petitioner has already been rejected by the learned Trial Court.

50. Insofar as the other considerations are concerned, the learned SPP has submitted that the allegations are grave, that the deceased was a person of considerable public stature, and that the petitioner, being a police officer of the State, is in a position to influence the witnesses while the examination of witnesses is in progress.

51. The learned SPP has thereafter referred to the provisions of Section 2 of the BNS, 2023, to elaborate the definition of “act” to include a series of acts. He then referred to the definitions of “offence” in Section 2(24) and “omission” in Section 2(25).

52. The learned senior counsel, as the Special Public Prosecutor, has thereafter referred to the following citations to emphasize the parameters that are required to be kept in mind while considering the prayer for bail of an accused during the Trial.

1. (2010) 14 SCC 496 (*Prasanta Kumar Sarkar Vs. Ashish Chatterjee and another*) – Para 9:

“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.”*

2. (1987) 2 SCC 684 (Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another) – para 6

“6. As regards merits, for granting the bail, the learned Judge appears to be influenced by two factors, firstly, he observed that the trial could not be commenced or completed as directed by Justice D.N. Jha by his order dated December 10, 1985. In this respect the complainant has filed a detailed affidavit giving the details of the proceedings before the Trial Court. On a perusal of the same it is evident that the accused persons obtained adjournment after adjournment on one pretext or the other and they did not allow the court to proceed with the trial. On June 7, 1986 complainant's counsel had filed a written application seeking three days time to file counter-affidavit giving the details of the proceedings pending before the Trial Court. We are constrained to observe that Justice D.S. Bajpai refused to grant the prayer and proceeded to grant bail simply on the ground that the liberty of a citizen was involved which is the case in every criminal case more particularly in a murder case where a citizen who let alone losing liberty has lost his very life. Another ground for granting bail was that trial was delayed, therefore the accused was entitled to bail. This also cannot be helped if a litigant is encouraged to make half a dozen applications on the same point without any new factor having arisen after the first was rejected. Had the learned Judge granted time to the complainant for filing counter-affidavit, correct facts would have been placed before the court and it could have been pointed out that

apart from the inherent danger of tampering with or intimidating witnesses and aborting the case, there was also the danger to the life of the main witnesses or to the life of the accused being endangered as experience of life has shown to the members of the profession and the judiciary, and in that event, the learned Judge would have been in a better position to ascertain facts to act judiciously. No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the court. Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case."

3. (2004) 7 SCC 528 (Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias PappuYadav and another) – para 11:

*“**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. (See Ram GovindUpadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)”

4. (2002) 3 SCC 598 (Ram Govind Upadhyay vs. Sudarshan Singh and others) – para 3 & 4.

“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.”

5. (2005) 8 SCC 21 (State of U.P. through CBI Vs. AmarmaniTripathi) – para 18

“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 Prahlad 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. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 535-36, para 11)

“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. (See Ram GovindUpadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and*

Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)”

53. The learned SPP has submitted, wherein reference has been made to the different provisions of law, including references to Sections 2(1), (15),(25), 3(4), (7), 45(a), 100 read with Section 105 of the BNS, 2023. The act of the petitioner, in being one of the first three to enter the water on the yacht having arrived at the rendezvous, has been indicated to have acted as the first instigation for the deceased to go for a swim, and where, after taking off his life jacket in a stuporous and intoxicated condition, the deceased nearly drowned. The second instigation for the deceased has been indicated to be an act of the petitioner in asking the Accused No. 3 to swim to the beach, when the deceased jumped into the water without a life jacket. His proposal to swim to the beach has been asserted to be “operative instigation”, and a reference has been drawn to the provisions of Section 45(a) of the BNS, 2023.

54. The knowledge of the petitioner regarding the history of epileptic seizures of the deceased, the medical advisory history, the state of intoxication, the visible exhaustion of the deceased, the knowledge about the briefing on the use of life jackets, the petitioner being a police officer and the very defence projected by the petitioner have been termed as ingredients of “mens rea” of the petitioner.

55. The “Duty of Care” is sought to be implicated on the petitioner by asserting that he was the only family member present, and by further asserting that, by

his own admission, he was keeping a close watch on the deceased, he had exhibited that he had voluntarily assumed the duty of care of the deceased. As per the assertions, the petitioner alone, apart from the band members, knew about the epilepsy of the deceased while the NRIs and the captain of the yacht were oblivious of the same. It has also been asserted that he had created danger by his acts of entering into the sea and later, proposing to swim to the shore.

56. The omissions attributed to the petitioner are non-disclosure of the risks faced by the deceased to either the organizers of the yacht trip or the captain of the yacht, not stopping the water activities, not ensuring that the deceased wore the life jacket even after the first round of swimming, when he nearly drowned, and that he went near the deceased only when prodded by the NRIs. The omissions have been asserted to be illegal since, as per circulars of the Maritime and Port Authority of Singapore, it is prohibited to swim without a life jacket in the condition that the deceased was in. It has been asserted that the omissions above, coupled with the acts of instigation, form a single series of acts, constituting the offence of culpable homicide and abetment by instigation. It has also been asserted that since breach of duty assumed voluntarily is actionable, such breach would be covered by the definition of "offence". It concludes by asserting that all ingredients of Section 105 of the BNS, 2023 would be established in the trial; the evidence consists of the own statement of

the accused and the accused being a member of Assam Police Service, and further, many of the witnesses present in the yacht and members of the Assam Singapore Association having yet to depose, there is a real likelihood of influencing the witnesses.

57. The prayer for grant of bail to the petitioner has to be considered on settled parameters. To recapitulate, as observed in *Kalyan Chandra Sarkar* (supra), liberty is to be secured through the process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as well as the collective interest of the community, so that parties do not lose faith in the institution and indulge in private retribution. While considering a prayer for grant of 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 granted particularly, where the accused is charged of having committed a serious offence.

58. It is clarified that the observations made hereinafter are, therefore, confined to the question of bail, are tentative in nature, and shall not be allowed to influence the course of the trial.

59. While resisting the prayer for bail, it was the case of the prosecution that

two persons, who do not include the petitioner, had conspired in Assam to ensure that the deceased would travel to Singapore, where he would be fed excess alcohol. The Investigation Report attributes the feeding of alcohol to the deceased to persons other than the petitioner herein. The travel arrangements of the petitioner were made by the manager of the deceased, and the prosecution does not counter the assertion of the petitioner that he had accompanied the deceased to Singapore on his request. It has been submitted on behalf of the State/prosecution that the petitioner may not have been a part of the original conspiracy and that the allegation against him is confined to non-discharge of the duties cast upon him to care for the deceased. This Court is therefore absolved of the necessity to consider the involvement or otherwise of the petitioner in the alleged conspiracy, which originated in Assam.

60. Let this Court now examine the plea of the petitioner for bail on the parameters settled by law, which are reflected in the judgments relied upon by the prosecution.

61. While considering as to whether there is any prima facie or reasonable ground to believe that the accused had committed the offence, this Court notices that the allegation of the prosecution that the petitioner had acted in a manner which instigated the deceased to go for swimming, not once but twice, is primarily based on the digital evidence and statements of some of the witnesses. On a perusal of the evidence upon which both the petitioner and the

prosecution had relied, prima facie it appears to this Court that the digital evidence has been opined by some of the PWs to indicate that the petitioner had verbally restrained the deceased from entering the water for a second time, and some PWs have opined that Accused No. 3, and not the petitioner, had suggested for a swim to the shore, after the deceased had returned to the yacht after the first swim. The evidence regarding the instigation offered by the petitioner, as offered till now by the prosecution in the trial, is, prima facie, not glaring enough to wholly dispel the possibility of acquittal. At the cost of repetition, I hasten to add that this is a prima facie view, based on a cursory evaluation of the evidence adduced so far, only for the purposes of the present bail petition, and the learned Trial Court would retain the privilege, as a Court of First Instance, to conduct a detailed examination and render a final opinion on the trial.

62. Turning attention to the nature and the gravity of the alleged offence and the severity of the punishment in the event of conviction of the petitioner, this Court notices that the charges framed against the petitioner relate to the provisions of Section 105 of the BNS, 2023, by imputing knowledge to the petitioner that his acts or his omissions were likely to cause death. The nature and gravity of the charges leveled against the petitioner are not grievous, as no intention to cause death has been imputed to him, and in view of the fact that the charges against the co-accused, amongst others, are of murder and

conspiracy to commit murder. The charges, as they stand against the petitioner today, if proved, would carry a maximum sentence of 10 years, since knowledge has been attributed without attributing intention.

63. The petitioner has made a specific statement that his passport had been seized at the time of his arrest, thereby reducing the danger of the petitioner either absconding or fleeing from the country, if released on bail. Moreover, appropriate conditions can be imposed to ensure the participation of the petitioner in the remainder of the trial. The petitioner is admittedly a government servant and, as already noted in the preliminary part of this order, the prosecution has not controverted the assertion that the petitioner does not have any previous criminal antecedents. Insofar as the likelihood of influencing witnesses is considered, the prosecution has expressed apprehension regarding the witnesses who were fellow travellers in the yacht and members of the Assam Singapore Association. The petitioner can be restrained, with appropriate conditions, from influencing the witnesses who remain to depose. With the trial being conducted in a Special Court, designated only to deal with the particular trial and the prosecution being conducted by a special team constituted exclusively for purposes of the connected trial, the possibility of justice being thwarted in the event bail is granted does not appear imminent.

64. The petitioner has been in custody since 8.10.2025, and has thus

undergone one year of incarceration. The investigation is complete, and the chargesheet was filed on 12.12.2025, and the trial is proceeding. It is not contested that he has no past criminal record. He belongs to a middle-class family and was serving as a Deputy Superintendent of Police under the Government of Assam, and no material has been shown to indicate that he is likely to abscond. The case against him rests largely on documentary and digital evidence, including the autopsy and toxicology reports and the digital material which has already been secured and brought on the record of the learned Trial Court, which leaves little scope for tampering. Although the trial is being conducted before an Exclusive Fast Track Sessions Court, the Investigation Report itself refers to witnesses numbering up to LW 287, and the trial will take some more time to conclude. In *Kanha @ Kanhaiya Singh* (supra), the Supreme Court, noticing that the appellant had already undergone more than one year of incarceration and that it would take some more time for the trial to conclude, held that a case for bail was made out.

65. It is settled that the object of pre-trial detention is to secure the presence of the accused at the trial and not to punish him before guilt is established, and that bail and not jail is the rule as was held in (***Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh***, reported in ***(1978) 1 SCC 240*** and subsequently in many other judgments.

66. Having regard to the totality of the circumstances, namely, the stand of the

learned SPP that the petitioner may not have been a part of the original conspiracy, the debatable question whether the omissions alleged were breaches of a legal duty, the completion of the investigation, the nature of the evidence and the period of custody already undergone, this Court is of the view that the petitioner is entitled to be released on bail, subject to appropriate conditions.

67. Accordingly, the accused petitioner A-5, Sandipon Gard, is hereby allowed to go on bail in connection with Session Case no 256/2025, upon furnishing a bond of Rs. 50,000/- with 2(two) local sureties of the like amount each, who have immovable properties within the jurisdiction of the learned Trial Court, to the satisfaction of the learned Trial Court, who shall be at liberty to impose such other conditions, over and above the conditions imposed by this order, to ensure the participation of the petitioner in the Trial.

68. The following conditions are imposed:

- (i) He shall not remain absent from the trial proceedings without sufficient cause, which shall be subject to the satisfaction of the learned Trial Court.
- (ii) He shall cooperate with the remaining trial.
- (iii) He shall not hamper the trial or tamper with evidence.
- (iv) He shall not try to influence any witnesses.
- (v) He shall not leave the jurisdiction of the Learned Trial Court without due written permission.

69. In case of violation of the bail conditions, the bail shall be liable to be cancelled.

70. The bail petition resultantly stands allowed.

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

72. 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.

JUDGE

Comparing Assistant