

**HIGH COURT OF TRIPURA
AGARTALA
BA 9 of 2024**

Smt. Sajali Tripura
on behalf of accused Anna Kumar Tripura

Versus

The State of Tripura

....Applicant

....Respondent(s)

For the Applicant(s)	:	Mr. S. Sarkar, Sr. Advocate
	:	Ms. V. Poddar, Advocate
	:	Ms. M. Pal, Advocate
For the Respondent(s)	:	Mr. S. Ghosh, Addl. P.P
Date of hearing & Delivery of Judgment & Order	:	12.03.2024
Whether fit for reporting	:	No

HON’BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)

This is a bail application under Section 439 of Cr.P.C. filed by the applicant/Smt. Sajali Tripura on behalf of the accused in connection with Sabroom PS Case No.2023/SBM/071 under Sections 341/376 of IPC praying for enlarging the accused on bail. The accused, namely, Anna Kumar Tripura is in custody since 18.12.2023 except for a few days when he was on bail.

2. The accused/Anna Kumar Tripura had been arrested for allegedly committing offence of rape punishable under Section 376 of the Indian Penal Code. The mother of the victim girl had lodged the complaint on 18.12.2023 alleging *inter alia* that on 17.12.2023, at about 17:00 hrs., her daughter aged about 19(nineteen) years, while was returning to her house after playing from high school ground, then the said accused/Anna Kumar Tripura restrained her and forcefully took her in bamboo bush and committed rape upon her daughter forcefully. On 18.12.2023 itself, the

victim girl disclosed the said fact to the complainant/mother and other neighbours. The Officer In-charge, Sabroom Police Station after receipt of the complaint had registered the case under FIR No.2023/SBM/071. The accused/Anna Kumar Tripura had been arrested on the same date i.e. on 18.12.2023 itself. The victim girl was also medically examined. The accused was produced before the court of learned SDJM and a bail application was moved. Vide order dated 19.12.2023, the learned SDJM had allowed the accused to go on interim bail. The Case Diary was called for. The bail application came up for consideration again on 22.12.2023 when the IO had forwarded the updated CD, Medical Examination report of the victim along with one bail cancellation petition for cancelling the interim bail which was granted to the petitioner. The learned Court of SDJM had noted the submissions of learned counsel appearing on behalf of the accused as well as the Public Prosecutor appearing for the State-respondent. Thereafter, learned SDJM had observed thus:-

“Perused the record.

After hearing both the side and perusing the CD I find that since grave allegations are being brought against the accused person in this case, hence I am of the considered opinion that present allegation that the accused person is pressurising the victim and her family to withdraw the case requires in detailed clarification.”

3. Thereafter, learned SDJM had observed that:-

“Perused the case record.

Upon perusing all the documents/primary evidences and hearing the arguments, I am of the considered opinion that prima facie materials which can make this case is absent here and hence, considering the above facts and circumstances, the nature and gravity of the offences, the bail prayer of the accused is hereby allowed.”

4. However, learned SDJM had imposed certain conditions in his order granting bail. While imposing the conditions, the learned court of SDJM had imposed a condition that *“violation of any condition shall make liable for the cancellation of bail.”*

5. The orders dated 22.12.2023 and 23.12.2023 were challenged by the prosecution before the court of learned Additional Sessions Judge, South Tripura, Sabroom. The learned Additional Sessions Judge, South Tripura vide order dated 09.01.2024 had cancelled the benefit of bail granted to accused by learned SDJM with the following observation:-

“The moot question may arise here as to whether the I/C Sub-Divisional Judicial Magistrate, Sabroom was justified in the eyes of law considering the facts of the case to release the accused person namely, Anna Kumar Tripura against whom case is being registered for commission of alleged rape upon the victim girl (name is not disclosed to preserve the confidentiality of the victim’s identity) under section 341/376 of IPC.”

6. Thereafter, the learned Additional Sessions Judge had observed thus:-

“Having considered the nature and gravity of alleged offences and prima facie evidence establishing the prosecution case that on the alleged date, time and place accused Anna Kumar Tripura obstructed victim girl and committed sexual intercourse forcibly taking her to a place nearby a bamboo bushes of Lunga by removing her clothing and made her senseless when she was returning to her home after finishing her day's games from the school playground, it appears that Learned Sub-Divisional Judicial Magistrate, Sabroom perhaps did not properly examine the incriminating facts and circumstances appearing against the accused on the record and apply his judicial mind keeping in view the nature and gravity of alleged offences and therefore, granted bail releasing accused at large by only imposing certain conditions including to appear before the Investigating Officer periodically.

This Court is of considered opinion finding merit in the aforesaid prayer of IO for cancellation of bail accompanied by incriminating attendant facts and circumstances appearing from the FIR and CD that accused should be arrested again by the IO for the interest of justice and put him behind the bar under judicial custody.

Accordingly, application for cancellation of bail stands allowed and bail order dated 17.12.2023 passed by the I/C SDJM, Sabroom is hereby overruled and cancelled in exercise of power conferred under section 439(2) of Criminal Procedure Code.”

7. To sum up, the reasonings assigned by learned Additional Sessions Judge in cancelling the bail, it transpires that learned Additional Sessions Judge had considered the fact that the offence allegedly committed by the accused was one of heinous nature of crimes and the learned SDJM had failed to properly examine the materials brought on record and he failed to apply his judicial mind properly.

8. On the aforesaid background of facts, I have heard Mr. S. Sarkar, learned senior counsel assisted by Ms. V. Poddar and Ms. M. Pal, learned counsel appearing for the accused/appellant. Also heard Mr. S. Ghosh, learned Addl. P.P appearing for the State-respondent.

9. Mr. Sarkar, learned senior counsel appearing for the accused/applicant submits that there is serious contradiction between the *Ejahaar* and the statements made by the victim under Section 164(5) of the Cr.P.C. Mr. Sarkar, learned senior counsel has further submitted that Medical Examination reports totally discarded the prosecution story that the victim was inhumanely raped by the accused. Learned senior counsel has further contended that charge-sheet has already been submitted and trial is about to commence. Learned senior counsel further submits that after imposition of the conditions vide orders dated 22.12.2023 and 23.12.2023 by

learned SDJM, the accused had never made any attempt to intimidate/win over any of the witnesses of the case and he had never threatened any of the prosecution witnesses.

10. Learned senior counsel for the accused/applicant would contend that the accused is a permanent resident of State of Tripura and he will not evade the trial. Ultimately, learned senior counsel submits that it is a fit case for granting bail to the accused person.

11. On the other hand, Mr. Ghosh, learned Addl. P.P has strongly opposed the prayer for granting bail made by the accused/applicant. Learned Addl. P.P. has tried to persuade this Court that there is no substantial contradiction between the statements made in the *Ejhar* and the statements recorded under Section 165(5) of the Cr.P.C. by the victim girl. Learned Addl. P.P has forcefully submitted that the accused is very influential political leader and he may tamper the evidence and also shall try to win over the prosecution witness to get rid of the offence he allegedly committed.

12. During his deliberations, this Court has made a specific query to the learned Addl. P.P as to whether there is any reference in the order dated 09.01.2024 as regards the complain of threatening of withdrawal of the case. Mr. Ghosh, learned Addl. P.P despite his meticulous scrutiny did not find any reference to such complaint.

13. Learned Addl. P.P has prayed for adjourning the case only on the ground to provide him an opportunity to produce the reference of GD Entry Number and the complaint thereof.

14. To oppose the present bail application, learned Addl. P.P has submitted that it is a clear case of committing rape and bail should not be granted. Learned Addl. P.P further contends that learned Additional Sessions Judge has rightly cancelled the bail granted by learned SDJM for fair ends of justice.

15. I have considered the rival submissions advanced by learned counsel appearing for the parties.

16. I have meticulously perused the copies of the charge-sheet where I find the copies of the *Ejahaar*, statements recorded under Section 164(5) Cr.P.C. and also the Medical Examination reports, which includes SFSL report. I have also meticulously perused the order cancelling the bail of the accused passed by learned Additional Sessions Judge, South Tripura, Sabroom. In the said order dated 09.01.2024, learned Additional Sessions Judge had reproduced the grounds taken by the prosecution in the application for cancellation of bail which may be reproduced here-under, for convenience:-

“Challenging said bail order for the interest of investigation, 10 sought for cancellation of bail. On the following grounds IO as well as Learned Public Prosecutor placed same type of application for bail cancellation:

(i) That Learned SDJM, Sabroom, South Tripura did not consider the gravity of alleged offences keeping in view the available incriminating facts and circumstances on the record. Rather the allegation brought against the accused which is serious in nature has been overlooked and lightly granted bail to the accused by assigning no reasons.

(ii) That no appropriate or strict conditions was imposed while granting bail upon accused person.

(iii) That accused presently on bail is politically and financially influential as well as strong person and he may hamper and temper the investigation and evidence of the case

by using his strong background. Whereas, the victim girl belongs to a poor family living with her widow mother.

(iv) That during preliminary investigation credible and direct evidence has been discovered and gathered that established prima facie the fact that accused Anna Kumar Tripura forcibly committed sexual intercourse to victim girl on the alleged date, time and place. But ignoring prosecution case bail was granted that would result in the purpose of investigation gets frustrated.”

17. Lastly, learned Additional Sessions Judge in his order dated 09.01.2024 while cancelling the bail had observed thus:-

“Having considered the nature and gravity of alleged offences and prima facie evidence establishing the prosecution case that on the alleged date, time and place accused Anna Kumar Tripura obstructed victim girl and committed sexual intercourse forcibly taking her to a place nearby a bamboo bushes of Lunga by removing her clothing and made her senseless when she was returning to her home after finishing her day's games from the school playground, it appears that Learned Sub-Divisional Judicial Magistrate, Sabroom perhaps did not properly examine the incriminating facts and circumstances appearing against the accused on the record and apply his judicial mind keeping in view the nature and gravity of alleged offences and therefore, granted bail releasing accused at large by only imposing certain conditions including to appear before the Investigating Officer periodically.

This Court is of considered opinion finding merit in the aforesaid prayer of IO for cancellation of bail accompanied by incriminating attendant facts and circumstances appearing from the FIR and CD that accused should be arrested again by the IO for the interest of justice and put him behind the bar under judicial custody.

Accordingly, application for cancellation of bail stands allowed and bail order dated 17.12.2023 passed by the I/C SDJM, Sabroom is hereby overruled and cancelled in exercise of power conferred under section 439(2) of Criminal Procedure Code.”

18. I have given my thoughtful considerations to the observation made in the above order dated 09.01.2024 passed by learned Additional Sessions Judge, South Tripura, Sabroom. It is apparent on face of the order that learned Additional Sessions Judge had not considered at all the materials found in the Case Diary. I find that in the Ejahar, which was lodged by the mother of the victim girl, it was stated *inter alia* that while she was returning from her school after playing games, the accused restrained her movement and took her to a nearby place of bamboo bushes where he committed rape upon the victim girl.

19. At this juncture, I have also perused the statements of the victim girl recorded under Section 164(5) of Cr.P.C. where the victim had stated that on 17.12.2023, just before sunset when she was working at her home, Sajal Tripura's father came to her home and offered her Rs.20.00 to purchase food. He told her that he was going to harvest bamboo shoots and asked her whether she could be willing to help him to harvest the same. It was further been stated that as the accused i.e. father of Sajal Tripura was from her own village so she trusted him and went to nearby bamboo plantation with him. At the said place the accused forcibly took down her undergarments and pulled her down on the ground and penetrated his private part into the private of the victim and during that process she had lost her sense. After committing rape, the accused left her alone at that place. After regaining her consciousness, she came back to her home and disclosed the incident to her mother and later on, the same was informed to others.

20. After perusal of the SFSL report, it transpires that seminal stain/spermatozoa/blood stain of human origin could not be detected in the

exhibits marked as A, B, C, E, F, G, L, M, N, O and P. These exhibits comprised of high vaginal swab, low vaginal swab, urethral swab, blood sample and urine (Exhibit.A, B, C, D AND E) of the victim. No epithelial cell could be detected in the exhibits marked as I, J, K, O and P and there was no foreign hair in the exhibits marked as I and K.

21. Thereafter, I have perused the medical reports of the victim who was examined on the very next day of the occurrence of the incident i.e. on 18.12.2023 where doctor opined that there was no “fresh external injury”.

22. From the above materials, I find the very genesis of the case is doubtful. In the *Ejahaar* lodged by the mother of the victim, it is stated that the incident occurred when the victim was coming from school and on the way she was restrained and raped at a place covered with bamboo bushes. But, the victim, who is 19 years old has stated in her statement recorded under Section 164(5) Cr.P.C. that while she was working at home on 17.12.2023, the accused came to her, and handed a sum of Rs.20.00 to buy food. At that point of time, the accused informed her that he was going to harvest bamboo shoots and the victim girl could accompany him, if she so desires.

22.1 *Firstly*, I find contradiction in the statements made in *Ejahaar* and the statement recorded under Section 164(5) of Cr.P.C. as regards the place wherefrom the victim girl was taken to harvesting place.

22.2 *Secondly*, admittedly, the victim girl was medically examined on the very next date i.e. on 18.12.2023 when the doctor did not find any fresh external injury in her person.

23. The SFSL report *prima facie* makes the story more doubtful as narrated here-in-above. These are the factual aspects brought on record, which learned Additional Sessions Judge, South Tripura had failed to consider while cancelling the benefit of granting bail to the accused. Only because an offence is very heinous in nature, bail cannot be discarded or bail order cannot be cancelled.

24. I have also taken into consideration the submission of learned Addl. P.P. that the accused had threatened the victim to withdraw the case. This allegation is found in the order dated 22.12.2023 while granting interim bail to the accused. Even if this fact is believed, for argument sake, then also it was a fact that it was done before the application for bail was filed by the accused. I have observed earlier that while granting bail to the accused, learned SDJM had imposed a condition that accused would not violate any of the bail conditions during the period of bail and noticeably, there is no such material before this court that after granting bail, the accused had/has at any point of time has threatened the victim girl or tried to win over any of the prosecution witnesses or to temper the evidence transpired during the period of investigation.

25. In the light of above observation, In my opinion, the learned Additional Sessions Judge had passed the order cancelling the bail of the petitioner in a mechanical manner.

26. In the *Dolat Ram Vs. State of Haryana* reported in (1995) 1 SCC 349, the Hon'ble Supreme Court has laid down the ground for cancellation of bail which are:-

“(i) *interference or attempt to interfere with the due course of administration of justice;*

- (ii) *evasion or attempt to evade the due course of justice;*
- (iii) *abuse of the concession granted to the accused in any manner;*
- (iv) *possibility of the accused absconding;*
- (v) *likelihood of/actual misuse of bail;*
- (vi) *likelihood of the accused tampering with the evidence or threatening witnesses.”*

27. In the instant case, I find that the accused person had any criminal antecedent or was involved with any criminal cases. He is a permanent resident residing within the territorial jurisdiction of the South Tripura District, Sabroom.

28. Having considered the materials I have referred to here-in-above from the charge-sheet and having convinced that there is no chance of absconsion of the accused to evade the trial, I am inclined to set aside the order dated 09.01.2024 passed by learned Additional Sessions Judge, South Tripura, Sabroom cancelling the bail of the accused granted by learned SDJM, Sabroom, South Tripura and enlarge the accused on bail.

29. Accordingly, the accused namely, Anna Kumar Tripura shall be released on bail on furnishing a bail bond of Rs.50,000/-(Rupees fifty thousand) with one surety of the like amount to the satisfaction of the concerned SDJM, Sabroom, South Tripura, provided that the accused-applicant should abide by the following conditions:

- I. The accused shall not go outside territorial jurisdiction of the Court of Additional Sessions Judge, South Tripura.
- II. The accused shall not try to temper the evidence.
- III. The accused shall remain present before the court during the course of trial.

IV. The accused shall not try to meet with the victim girl and/or try to influence any of the prosecution witnesses.

V. And lastly, the accused shall appear before the Officer In-charge, Sabroom Police Station once in a week.

30. Resultantly, the bail application is allowed subject to the aforesaid conditions.

JUDGE

SAIKA
T KAR
Rohit

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by SAIKAT KAR
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