

**HIGH COURT OF TRIPURA
AGARTALA
B.A. No.87 of 2024**

Smt. Swapna Chakraborty (Ghosh)

W/O- Sri Amit Ghosh
R/O- Maharanipur, Ward No.-3
P.S. Teliamura, Khowai, Tripura

.....Applicant

On behalf of:

Sri Amit Ghosh

S/O- Rabindra Ghosh
R/O- Maharanipur, Ward No.-3
P.S. Teliamura, Khowai, Tripura

....Accused person

Versus

The State of Tripura

...Respondent

For Applicant(s)	:	Mr. P. K. Biswas, Sr. Adv, Mr. Pujan Biswas, Adv.
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For Respondent(s)	:	Mr. Raju Datta, P.P.
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HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

13/12/2024

This bail application under Section 483 of BNSS, 2023 is filed for releasing the accused-in-custody namely Sri Amit Ghosh who is lodging in jail in connection with case No.S.T.(T-1) 24 of 2024 arising out of Teliamura P.S. case No.48 of 2024 under Section 103(1)/61(2)/238 of BNS.

Heard Learned Senior Counsel, Mr. P. K. Biswas assisted by Learned Counsel, Mr. Pujan Biswas appearing on behalf of the accused-in-custody and also heard Learned P.P., Mr. R. Datta representing the State-respondent.

As per earlier order, Learned P.P. has produced the Case Diary and also we have received the LCR by this time. Taking part in the hearing, Learned Senior Counsel, Mr. P. K.

Biswas first of all drawn the attention of the Court, the contents of the FIR and submitted that the FIR was unknown and in course of investigation, the present accused was arrested and taken into custody along with another accused and save and except confessional statement of the accused, there is no evidence on record against the accused-in-custody and furthermore, the alleged statement of the accused was also not recorded as per the prescribed procedure of law and furthermore, referring the final report of I.O., Learned Senior Counsel submitted that the accused himself appeared before the Police Station being called for and there is no chance of his absconsion or tempering the evidence on record, since the I.O. by this time has laid charge-sheet against the accused. Learned Senior Counsel further referred citation of a Division Bench of this High Court in **Crl.A.(J) 12 of 2023** reported in **(2024) 2 TLR 359** wherein in para No.34, this High Court observed as under:

"34. Learned Senior Counsel also in course of hearing referred the provision of Sections 25 and 26 of the Evidence Act and submitted that if for argument sake the alleged statement of the accused appellant is treated as confessional statement under Section 25 and 26 of the Evidence Act, in that case the same also cannot be taken into consideration as per law. In this regard, Learned Senior Counsel has relied upon another citation of Hon'ble Gauhati High Court in Kartik Chakraborty and Others versus State of Assam reported in (2018) 2 GLR 1 which reads as under :

"33. This has also been the view of the Madras High Court and it finds its expression in several decisions. In Palanisamy alias Kunjupaiyan Vs. State, Criminal Appeal No.541/2005, decided on 22.03.2013, Madras High Court has held that the Evidence Act was enacted before the commencement of the Code of Criminal Procedure, 1973. In view of Section 3(3) of the Code of Criminal Procedure, 1973, the term "Magistrate" referred to in Section 26 of the Evidence Act does not refer to Executive Magistrate. Consequently, the expression "Magistrate" as appearing in Section 26 of

the Evidence Act would mean only a Judicial Magistrate. Therefore, confession recorded or videographed by police in the presence of Executive Magistrate would be hit by Sections 25 and 26 of the Evidence Act. Again, in the case of Kalam @ Abdul Kalam Vs. Inspector of Police, reported in MANU/TN/07588/2011, the Madras High Court examined the provisions of Section 26 of the Evidence Act vis-à-vis Section 3(3) of the Code of Criminal Procedure, 1973 and after observing that the Evidence Act was enacted before the commencement of the Code of Criminal Procedure, 1973, held that the term "Magistrate" as referred to in Section 26 of the Evidence Act will mean only a Judicial Magistrate."

Referring the above, Learned Senior Counsel submitted that the statement was recorded in presence of Executive Magistrate, not before any Judicial Magistrate as interpreted by the Hon'ble Gauhati High Court. So, there was also no scope to place any reliance upon the evidence of PW-1, Shri Santanu Dutta DCM in whose presence the disclosure statement was recorded by IO on the alleged date and time."

Referring the same, Learned Senior Counsel submitted that since there is want of procedural defects, so, at the end of trial this present accused would be acquitted. So, no purpose would be served by keeping the accused in J/C.

Learned Senior Counsel also referred another citation of the Hon'ble Supreme Court of India in reported in **(2012) 1 SCC 40** in para Nos.40 and 46 the Hon'ble Supreme Court observed as under:

"40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that

the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI."

He further referred another citation of the Hon'ble Supreme Court of India in **(2024) SCC OnLine SC 3526** wherein in para Nos.5, 6 & 7, Hon'ble the Apex Court observed as under:

"5. Accordingly, we direct that the appellant shall be produced before the Trial Court within one week from today. The Trial Court shall enlarge the appellant on bail till the conclusion of the trial on appropriate terms and conditions, including the condition of regularly and punctually attending the Trial Court and cooperating with the Trial Court for expeditious conclusion of the case.

6. Before we part with this order, every day we notice that in several orders passed by different High Courts while rejecting the bail applications, in a routine manner, the High Courts are fixing a time bound schedule for the conclusion of the trials. Such directions adversely affect the functioning of the Trial Courts as in many Trial Courts, there may be older cases of the same category pending. Every court has criminal cases pending which require expeditious disposal for several reasons, such as the requirement of the penal statutes, long incarceration, age of the accused, etc. Only because someone files a case in our Constitutional Courts, he cannot get out of turn hearing. Perhaps after rejecting the prayer for bail, the Courts want to give some satisfaction to the accused by fixing a time-bound schedule for trial. Such orders are difficult to implement. Such orders give a false hope to the litigants. If in a given case, in law and on facts, an accused is entitled to bail on the ground of long incarceration without the trial making any progress, the Court must grant bail. Option of expediting trial is not the solution.

7. In paragraph 47.3 of the decision of a Constitution Bench of in the case of 'High Court Bar Association, Allahabad v. State of Uttar Pradesh'¹, this Court has held that in the ordinary course, the Constitutional Courts should refrain from fixing a time-bound schedule for the disposal of cases pending before any other Courts. Paragraph 47.3 reads thus:

"47.3. Constitutional courts, in the ordinary course, should refrain from fixing a time-bound schedule for the disposal of

cases pending before any other courts. Constitutional courts may issue directions for the time-bound disposal of cases only in exceptional circumstances. The issue of prioritising the disposal of cases should be best left to the decision of the courts concerned where the cases are pending;"

(underline supplied)

Referring the same, Learned Senior Counsel urged for releasing the accused on bail in any condition.

On the other hand, Learned P. P., Mr. R. Datta appearing on behalf of the State-respondent strongly objected the submission made by Learned Senior Counsel, Mr. P. K. Biswas and submitted that at this stage, there is no scope to release the accused-in-custody on bail, since, the I.O. has laid charge-sheet within time. Learned P. P. further drawn the attention of the Court referring the statement of the accused-in-custody and also the post-mortem examination report and submitted that there are strong materials showing involvement of the accused with the alleged crime. Further, Learned P. P. also submitted that the citations as referred by Learned Senior Counsel for the accused-in-custody relates to trial, not for consideration of the bail application. So, these principles cannot be applied at this stage and urged for dismissal of this bail application.

Heard both the sides at length.

Considered.

The present prosecution was set into motion on the basis of an FIR laid by one Sekhar Debnath to O.C., Teliamura P.S. alleging inter alia that on 18.07.2024 around 10.15 p.m. during night, his younger brother Kinkar Debnath left his house situated near Korailong, infront of Sishu Bihar School stating to

this wife that one of his friends had called him, but when he did not return back to his house in the late night, his wife called him and informed him that her husband did not return back and he was not responding any phone call. The informant also made several phone calls in his mobile but he did not receive any of the calls. The other villagers also made call to Kinkar but those calls were not responded. After that they started searching him and thereafter, on 19.07.2024 at about 5.30 a.m. in the morning, the dead body of his younger brother was found lying at South Pulinpur near the National Highway and his nose was found to be bleeding and his tongue was protruding out. He immediately rushed to P.O. and found his brother lying dead. Hence, he laid the FIR. On the basis of his FIR, this case was registered and in course of investigation, the I.O. caused arrest of this present accused-in-custody and the wife of the deceased Purnima Debnath who are also lodging in custody in connection with this case.

It is the admitted position that the I.O. by this time has laid charge-sheet against this present accused and another within time and the case by this time has been committed to the Court of Sessions for holding trial of accused persons. The accused is lodging-in-custody on and from 21.07.2024 and the I.O. within time has laid charge-sheet and the case is now posted for framing of charge. On perusal of the Case Diary, it appears to this Court that there is direct allegation against the accused showing his involvement with the offence as alleged.

So, considering the facts and circumstances of this case, at this stage, I find no scope to release the accused-in-

custody on bail. Hence, the bail application filed on behalf of the accused-in-custody stands rejected being devoid of merit. The citations as referred by Learned Senior Counsel for the accused-in-custody cannot be applied at this stage. The accused is to remain in J/C as before. Since, the charge-sheet is already been submitted and the case is now posted for framing of charge, so, Learned Court below be asked to make all endeavour to complete the trial of the case at an earliest convenience giving top priority.

A copy of this order be communicated to the Learned Court below along with the LCR. Also return back the Case Diary to I.O. through Learned P. P. along with the copy of this order.

With this observation, this bail application stands disposed of.

JUDGE



**MOUMITA
DATTA**

Purnita

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MOUMITA DATTA
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