

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Petn. No.01 of 2025

Sri Goutam Kundu

.....Petitioner(s);

Versus

Union of India & another

.....Respondent(s).

For Petitioner(s) : Mr. Bibhal Nandi Majumder, Sr. Advocate,
Mr. Kushal Deb, Advocate,
Mr. Bikash Paul, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Deputy SGI,
Mr. Amitabha Ray Barman, Advocate,
Mr. Somraj Datta, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

05/03/2025

Petitioner is an accused in ECIR/GWZO/01/2015 instituted on 19.03.2015 by the Enforcement Directorate. The said case arose out of West Agartala P.S. Case No.141/2013 dated 15.05.2013 registered under Sections 420, 406 read with Section 34 of the Indian Penal Code, 1860 and Section 3 of the Tripura Protection of Interest of Depositors (In Financial Establishment) Amendment Act, 2011. The same is pending before the learned Special Court, West Tripura, Agartala which is the designated Court to conduct trial of offences punishable under Section 4 of the Prevention of Money-Laundering Act, 2002 [hereinafter referred to as *PMLA, 2002*] as per notification No.S.O.372(E) dated 05.02.2016 issued by the Government of Tripura. He was arrested on 23.11.2021 as is reflected from the order dated 25.01.2022 [Annexure-3 of reply affidavit] passed by the learned Special Judge in Spl. (PMLA) 01 of 2018. His bail applications have earlier been rejected by the orders dated 25.01.2022, 23.05.2023 and lastly by the impugned order dated 07.12.2024. Being aggrieved by the rejection of his bail application, petitioner has preferred the

instant petition under Section 482 of the Code of Criminal Procedure. Petitioner has prayed for quashing of the impugned order dated 07.12.2024 and also a direction upon the learned Special Judge, West Tripura, Agartala to consider the bail application of the petitioner in Spl. (PMLA) 01 of 2018 on merits.

2. Mr. Bibhal Nandi Majumder, learned senior counsel for the petitioner, has drawn the attention of this Court to the impugned order which reads as under:

“Mr. Koushik Dutta, learned Special P.P is present along with Smti.Malika Chadda, Legal consultant, Enforcement Directorate.

Mr. Jibesh Chakraborty, learned advocate for accused Goutam Kundu is present today by filing his memo of appearance.

Mr. Prasenjit Debnath, learned advocate for accused Shibamoy Datta files his memo of appearance.

Heard learned Special P.P on the bail application filed for and on behalf of accused Goutam Kundu on 12.11.2024 and considered.

It appears from the record that in this case the prosecution side never produced the charge sheeted accused persons before this Court under arrest for which it is very difficult to entertain any bail petition for the accused persons in this case. Similarly, prosecution side cannot be allowed to drag the case for a long time without production of the accused persons physically before this Court.

Hence, bail petition filed for accused Goutam Kundu on 12.11.2024 is hereby rejected.

The prosecution side is hereby directed to arrange for production of all the charge sheeted accused persons before this Court on the next date, so that trial can be commenced as early as possible.

Supply a copy of this order to learned Special P.P

Fix **30-01-2025** for further order.”

It is submitted that a mere perusal of the impugned order would show that his bail application has been rejected only on the ground that the prosecution has never produced the charge-sheeted accused persons before the Court under arrest. Learned senior counsel for the petitioner has also drawn the attention of this Court to the order dated 30.09.2021 passed in Criminal Petition No.36 of 2021 in the case of the petitioner. Petitioner had then challenged an order dated 15.12.2020 passed by the learned Special Judge refusing the request of the petitioner for production through video conferencing. A Coordinate

Bench of this Court presided over by the then Chief Justice vide order dated 30.09.2021 was pleased to set aside the impugned order dated 15.12.2020 with the following observations:

“[6] As per this proviso thus no Magistrate can authorize detention of the accused in custody of the police unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in custody. The Magistrate may extend further detention in judicial custody upon production of the accused either in person or through the medium of electronic video linkage. This provision thus requires physical production of the accused for the first time before the Magistrate who may authorize his detention. Subsequent production can be through video linkage. However, the fundamental question is, does this provision in the present case apply at all?

[7] Section 167 of Cr.P.C as correctly pointed out by the counsel for the petitioner provides for a procedure when investigation cannot be completed within 24 hours. This provision would have no applicability when the investigation is complete and the trial has commenced. In the present case, upon completion of investigation against the petitioner, the trial had to commence which could not proceed without the presence of the petitioner. The petitioner being lodged in a jail in a different state and also looking to the coronavirus spread, he himself had requested that such production may be done through video conferencing. Section 167(2)(b) would not prevent the Court from granting such request. In fact, as noted, elaborate provisions have made in the said Rules to enable such production.

[8] Under the circumstances, impugned order dated 15.12.2020 is set aside. It is provided that the petitioner shall be produced before the Special Court through video conferencing and without insisting on his physical presence before the Court on the future occasions, unless for reasons to be recorded in writing at an appropriate stage, the learned Judge may insist on his presence through video conferencing.”

3. Thereafter, apparently petitioner was produced through video conferencing on 23.11.2021 as taken note of earlier. It is submitted that petitioner has appeared through video conferencing before the learned Special Court thereafter on different subsequent dates. Learned senior counsel for the petitioner also submits that if the learned Trial Court considers it necessary for reasons to be recorded that the accused should appear physically on any date, the petitioner cannot have any objection thereto.

4. Learned counsel for the Enforcement Directorate, Mr. Barman has pointed out that the case has been posted for framing of charge by order dated 31.05.2024. Again by order dated 30.01.2025 the trial court has ordered for

physical production of the accused so that charges can be framed and trial commences. The relevant part of the order dated 30.01.2025 is extracted hereunder:

“Heard learned Counsel of both the parties at length and considered.

It appears from the record that on 18.1.2025 upon filing of a special application by the complainant an order was passed by this Court directing the Superintendent, Presidency Correctional Home, Alipore, Kolkata to produce 3 accused persons namely, Goutam Kundu, Ashok Kumar Saha and Shibamoy Datta before this Court physically on 30.1.2025 and in compliance of that order 3 separate production warrant was also issued, but today the Superintendent, Presidency Correctional Home, Alipore, Kolkata neither produces the above named 3 accused persons before this Court physically nor submits any prayer praying for further time to produce the accused persons before this Court.

Accordingly, office is directed to issue reminders for physical production of all the 3 accused persons before this Court on the next date.

Fix **10-04-2025** for production of the accused persons physically and further order.”

4. Learned senior counsel for the petitioner submits that if the Court insists upon physical presence of the accused for the purposes of framing of charge, the petitioner cannot have any objection. However, his application for bail has been rejected by the impugned order dated 07.12.2024 on totally non-est grounds without any application of mind on the merits of the prayer and discussion on the case of the parties. Therefore, the impugned order may be set aside. The learned Special Court may be directed to consider the bail application of the petitioner on its own merits in accordance with law. He submits that the petitioner may be allowed to file a fresh bail application.

5. Mr. Barman, learned counsel for the respondent-ED, has filed a detailed counter affidavit giving reference to multiple cases in which the petitioner has been accused in connection with the same nature of offences in different states including Tripura. He also submits that earlier the bail application of the petitioner was twice rejected on 25.01.2022, 23.05.2023 and lastly on 07.12.2024. No fresh grounds have been made out on the part of the

petitioner to seek bail. He has also made reference to Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS). It is submitted that the direction of the learned Special Court for physical production of the accused vide order dated 30.01.2025 is not under challenge. It is also submitted that respondent-ED has no objection if his bail application is considered in accordance with law on its own merits since the impugned order indisputably does not reflect any consideration on the plea of bail on merits.

6. I have considered the submission of learned counsel for the parties and taken note of the facts relevant for determination of the issue herein. The impugned order has been extracted in the opening paragraphs of this order.

In a case under the PMLA, 2002, the conditions enumerated under Section 45 thereof have to be duly taken into account by the learned Court while considering the bail application of an accused. Section 45 of the Act of 2002 reads as under:

“45. Offences to be cognizable and non-bailable.- (1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless--]

(i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees] may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by--

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

[*Explanation.*--For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.]”

A perusal of the impugned order does not reflect any discussion or consideration on the plea of the petitioner for bail on merits keeping into regard the statutory mandate and the judgments rendered by the Apex Court. The prayer for bail has been rejected apparently on the ground that the prosecution side never produced the charge-sheeted accused persons before the Court under arrest. The anxiety of the learned Court to proceed with the trial upon framing of the charges can be well understood. From the orders passed earlier such as 31.05.2024 and also the impugned order dated 07.12.2024, it appears that the learned Trial Court has sought production of the charge-sheeted accused persons so that the trial can be commenced as early as possible. The petitioner does not object to his physical production if insisted by the learned Trial Court for reasons to be recorded. It appears that repeated directions have been issued upon the Superintendent, Presidency Correctional Home, Alipore, Kolkata to produce the accused persons including the petitioner. Since the impugned order does not reflect any application of mind on merits on the prayer of bail made by the petitioner, the same cannot be sustained in the eye of law. It is accordingly set aside. Petitioner is at liberty to file a fresh bail application before the learned Special Court which shall be considered in accordance with law after due opportunity to the learned public prosecutor as per the mandate of the PMLA, 2002. The instant petition stands disposed of.

7. Let it be made clear that this Court has not gone into the merits of the plea for bail raised on behalf of the petitioner.
8. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ



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