

**HIGH COURT OF TRIPURA
AGARTALA**

B.A. No.7 of 2025

Smt. Anamika Sarkar
W/O: Shri Uttam Sarkar,
aged about 37 years,
resident of Baishnab Tilla, Badharghat,
PO: ONGC, P.S.: Amtali
Dist: West Tripura, Pin: 799014.

---- Applicant(s)

Versus

- 1. The State of Tripura**
2. Shri Samarjit Chowdhury,
son of Shri Dinesh Chowdhury,
resident of Khamarhati, P.S.-Madhupur,
P.O.-Madhupur, District-Sepahijala,
Pin-799102.

----Non-Applicant(s)

For Applicant(s)	:	Mr. Subham Majumder, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P., Mr. Rajib Saha, Addl. P.P., Mr. Subrata Sarkar, Sr. Adv, Mr. Kabrabam Dharendra Singha, Adv.

HON'BLE MR. JUSTICE BISWAJIT PALIT
Order

30/04/2025

This bail application under Section 483 read with Section 528 of BNSS is filed for cancelling/quashing/setting aside the order of interim bail dated 09.01.2025 delivered by Learned CJM, West Tripura, Agartala in connection with Amtali PS case No.126 of 2024 for the offence punishable under 103(1) of BNS, 2023. The respondent-principal accused has filed objection by filing counter affidavit and additional counter affidavit challenging the prayer of the victim-cum-applicant.

Heard Learned Counsel Mr. Subham Majumder appearing on behalf of the victim-applicant and also heard Learned P.P. Mr. Raju Datta representing the State of Tripura and

Learned Senior Counsel Mr. Subrata Sarkar assisted by Learned Counsel Mr. Kabrabam Dharendra Singha appearing on behalf of the respondent-accused namely Shri Samarjit Chowdhury.

In course of hearing of argument Learned Counsel for the victim-applicant first of all drawn the attention of the Court referring the order dated 09.01.2025 delivered by Learned CJM, West Tripura, Agartala and submitted that without considering the heinous nature of crime Learned CJM West Tripura Agartala by the said order granted interim bail to the respondent-accused whereas on the same day, charge-sheet was submitted by the IO on completion of investigation along with separate prayer for holding custody trial of the accused. However, from the order of Learned CJM, West Tripura, Agartala, it appears that nothing was mentioned in respect of filing of charge-sheet by the IO and the prayer of holding custody trial submitted by the IO was also not placed before Learned CJM, West Tripura, Agartala. Learned Counsel further submitted that although from the said order *prima facie* it appears that at the time of passing of order Learned CJM mentioned that the accused person was in JC for 89 days but factually on that day it was the 88th day, not 89th day and that order does not contain any ground as to why the bail was granted to the respondent-accused. Learned Counsel also referred the provision of Section 437(1) and its proviso and also Section 437(4) of Cr.P.C. and submitted that on bare perusal of the order, it appears that no reason was assigned by Learned CJM at the time of granting interim bail. Learned Counsel also drawn the attention of the Court referring the contents of the FIR and

submitted that it is clear that the alleged respondent-accused on the alleged day of commission of offence committed murder of two innocent persons mercilessly. So, considering the nature and gravity of the offence, he should be put behind the bars and the trial should be held keeping the accused in JC. Learned Counsel further drawn the attention of the Court referring Annexures-R/2 and R/3 and submitted that those papers were not placed before the Learned CJM at the time of passing of order. Learned Counsel also referred the statements of some of the witnesses of the prosecution recorded by the IO under 180 of BNSS in course of investigation of this case. Learned Counsel again drawn the attention of the Court referring Annexure-R/8 by which the informant of this case on 17.02.2025 submitted a prayer to SP, West Tripura District informing that the accused after release on bail from the Court was threatening the witnesses of the prosecution including the victim herself and further drawn the attention of the Court referring Annexure-R/9 and submitted that on 16.02.2025 the victim-applicant appeared before O/C, Amtali PS and narrated the fact of threatening the prosecution witnesses including the applicant herself by the respondent-accused and on the basis of that a P/R under Section 126 of BNSS is submitted by the IO and in support of his contention, he referred few citations before the Court.

Learned P.P. appearing on behalf of the State-respondent submitted that the IO on completion of investigation on the 88th day submitted charge-sheet against the accused before the Court but for some unknown reason, the said charge-

sheet was not placed before Learned CJM, West Tripura, Agartala and from the order of the Learned CJM, it is clear that simply on the basis of the fact that the accused was in JC for last 89 days, the order of interim bail was passed without assigning any reason which needs to be interfered with. In support of his contention, Learned P.P. also referred some citations which would be discussed later on. After that, the case was committed to the Court of Learned Sessions Judge, West Tripura, Agartala and by order dated 24.03.2025, Learned Sessions Judge, West Tripura, Agartala extended the period of interim bail till 16.04.2025 which was further extended later on till 30.04.2025. Learned P.P. also drawn the attention of the Court considering the seriousness and the gravity of the offence, the interim bail granted to the accused needs to be set aside and the accused may be taken into custody for the sake of justice and he may put behind the bars till conclusion of the trial of this case.

On the other hand, Learned Senior Counsel, Mr. Subrata Sarkar appearing on behalf of the respondent-accused first of all submitted that this present application is not at all maintainable. Learned Senior Counsel also submitted that from the order dated 09.01.2025, it appears that at the time of granting bail to the accused, considering the period of detention of the accused in custody and applying the judicial mind, Learned CJM, West Tripura, Agartala granted bail to the accused. Learned Senior Counsel also submitted that there is nothing on record to satisfy that after release on bail, the respondent-accused misused the conditions of bail granted to him and at this stage there is no

scope to allow the prayer of the victim-applicant and again submitted that the victim-applicant in the prayer portion although submitted that she has sought for separate relief under Section 528 of BNSS and since there is specific provision for dealing with the matter so, section 528 of BNSS is not applicable in this matter at this stage and urged for rejection of the application filed by the victim-applicant. In support of his contention, he also referred few citations.

In the case at hand, the prosecution was set into motion on the basis of an FIR laid by one Anamika Sarkar to O/C, Amtali PS alleging inter alia that on 13.10.2024(Sunday), her mother Soma Acharjee(51 years), her younger sister, Tanushree Chowdhury(34 years) and her maternal sister, Sonia Acharjee returned back to her mother's residence at ONGC, Netaji nagar after visting Durga Puja celebration from Agartala city and at that time, the husband of her younger sister namely Samarjit Chowdhury in a premeditated manner was waiting at the residence armed with sharp weapons and as soon as her mother, younger sister and maternal sister arrived home, said Samarjit Chowdhury launched a brutal attack on them with a sharp weapon. In an attempt to save their life, her mother and younger sister ran towards the gate but said Samarjit Chowdhury mercilessly killed them by chopping their heads and different parts of their bodies with sharp weapon. Seeing this, her maternal sister Sonia Acharjee started screaming and managed to escape by seeking refuge in neighbour's house thereby saving her life. Said Samarjit Chowdhury had been subjecting her younger sister to

continuous physical and mental torture for a prolonged period due to family dispute. About one year back when she was physically tortured to a dangerous extent, her younger sister took shelter to her mother's house and she has been residing therein since then. Meanwhile, a divorce case was filed which is pending. On 12.10.2024, said Samarjit Chowdhury made telephonic threats to her mother and younger sister stating that he would kill them and would not find peace unless he did so. Acting on this threat, he committed the gruesome murders in the dawn of 13.10.2024. She further stated that some other persons may be involved in this matter and accordingly laid the FIR.

On the basis of FIR, Amtali PS case No.126 of 2024 under Section 103(1) of BNS, 2023 was registered and in course of investigation, the IO caused arrest of the accused and produced him before the Court on 13.10.2024 and since then the accused was in custody. Thereafter, on 09.01.2025, Learned CJM granted interim bail to the accused till 22.01.2025 on the ground that the accused was in JC for 89 days but the accused could not execute bail bond so he was kept in J/C. Later on, he executed bail bond on 04.02.2025 and was released from custody on that day. The case was thereafter committed to the Court of Learned Sessions Judge, West Tripura, Agartala and by order dated 28.02.2025, Learned Sessions Judge, West Tripura, Agartala allowed the accused to remain on interim bail till 30.04.2025. In the meantime, on 28.02.2025, the IO of this case filed one application before the Court of Learned Sessions Judge, West Tripura,

Agartala for cancellation of the bail granted to the accused in reference to Amtali PS GD entry No.38 dated 17.02.2025.

I have heard detailed argument of both the sides at length and gone through the records of the Learned Court below. Here in this case at this stage this Court is to see as to whether the order dated 09.01.2025 passed by Learned CJM, West Tripura, Agartala granting interim bail to the accused was legally justified or not. As already stated along with the application for cancellation of bail, the victim-applicant annexed two documents i.e. Annexure-R2 and R3. R2 is one acknowledgment slip from which it appears that the charge-sheet of this case was received by some person on 09.01.2025 and from R3, it appears that the IO submitted charge-sheet and by the forwarding report prayed before the Court for holding custody trial of the accused but from the order of Learned CJM, it appears that nothing is mentioned in the order of Learned CJM that the IO has submitted charge-sheet on that day and the same forwarding report was produced before the Court of Learned CJM. Alternatively, if it is found that the IO on that date placed the same before Learned CJM but no cognizance on it was taken by Learned CJM on that day but on bare perusal of the order dated 09.01.2025 passed by Learned CJM, it appears that the said order does not contain any reasons as to why the bail was granted but save and except the observation that the accused is in JC for 89 days although according to the victim-applicant on 09.01.2025, it was the 88th day not 89th day. A calculation sheet was submitted in this regard before this Court and from which it appears that the accused was

produced before the Court of Learned Jurisdictional Magistrate on 13.10.2024 and the applicant has counted the date as 88th day excluding the date of production. This concept is not correct. Actually the period should be counted including the date of production before the Court. So, if it is so, it appears that Learned CJM rightly counted the days as 89 days in place of 88 days.

In support of his contention Learned Counsel for the victim-applicant referred few citations as already stated. In **Gurcharan Singh and others v. State (Delhi Administration)** reported in **(1978) 1 SCC 118** wherein in para No.18 Hon'ble the Apex Court observed as under:

"18. Chapter XXXIII of the new Code contains provisions in respect of bail bonds. Section 436, Cr. P. C., with which this Chapter opens makes an invariable rule for bail in case of bailable offences subject to the specified exception under sub-section (2) of that section. Section 437, Cr.P.C. provides as to when bail may be taken in case of non-bailable offences. Sub-section (1) of Section 437, Cr. P.C. makes a dichotomy in dealing with non-bailable offences. The first category relates to offences punishable with death or imprisonment for life and the rest are all other non-bailable offences. With regard to the first category, Section 437(1), Cr. P. C. imposes a bar to grant of bail by the Court or the officer incharge of a police station to a person accused of or suspected of the commission of an offence punishable with death or imprisonment for life, if there appear reasonable grounds for believing that he has been so guilty. Naturally, therefore, at the stage of investigation unless there are some materials to justify an officer or the Court to believe that there are no reasonable grounds for believing that the person accused of or suspected of the commission of such an offence has been guilty of the same, there is a ban imposed under Section 437(1), Cr. P.C. against granting of bail. On the other hand, if to either the officer incharge of the police station or to the Court there appear to be reasonable grounds to believe that the accused has been guilty of such an offence there will be no question of the Court or the officer granting bail to him. In all other non-bailable cases judicial discretion will always be exercised by the Court in favour of granting bail subject to sub-section (3) of Section 437, Cr. P. C. with regard to imposition of conditions, if necessary. Under sub-section (4) of Section 437, Cr. P.C. an officer or a Court releasing any person on bail under sub-section

(1) or sub-section (2) of that section is required to record in writing his or its reasons for so doing. That is to say, law requires that in non-bailable offences punishable with death or imprisonment for life, reasons have to be recorded for releasing a person on bail, clearly disclosing how discretion has been exercised in that behalf."

Further Hon'ble the Supreme Court in **State of Maharashtra v. Sitaram Popat Vetel and another** reported in **AIR 2004 SC 4258** wherein in para Nos.7, 8 and 9 observed as under:

"7. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the Courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
3. Prima facie satisfaction of the Court in support of the charge.

8. Any order devoid of such reasons suffers from non-application of mind as was noted by this Court. In **Ram Govind Upadhyay v. Sudarshan Singh and others**:(2002) 3 SCC 598); **Puran etc. v. Rambilas and another etc.**:(2001) 6 SCC 338) and in **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another** (JT 2004 (3) SC 442).

9. Though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing merits or demerits. As noted above, at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. But that does not mean that while granting bail some reasons for prima facie concluding why bail was being granted is not required to be indicated."

Further Hon'ble the Supreme Court of India in **State of Rajasthan v. Indraj Singh** reported in **2025 SCC OnLine SC 518** wherein in para Nos.8.2 and 8.3 observed as under:

8.2 In Mahipal v. Rajesh Kumar², this Court held as follows:-

"11. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 CrPC to grant bail. The power to grant bail under Section 439 is of a wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course. In *Ram Govind Upadhyay v. Sudarshan Singh* [*Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 2002 SCC (Cri) 688], Umesh Banerjee, J. speaking for a two-Judge Bench of this Court, laid down the factors that must guide the exercise of the power to grant bail in the following terms: (SCC p. 602, paras 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. 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...

12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail."

8.3 The discussion made in *Ajwar v. Waseem*³ by a coordinate Bench of this Court (which included one of us, i.e., Amanullah J.) is on point. The relevant paragraphs are as under: -

"Relevant parameters for granting bail

26. While considering as to whether bail ought to be granted in a matter involving a

serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. [Refer: Chaman Lal v. State of U.P. [Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974]; Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 2004 SCC (Cri) 1977]; Masroor v. State of U.P. [Masroor v. State of U.P., (2009) 14 SCC 286 (2010) 1 SCC (Cri) 1368]; Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765]; Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508: (2015) 3 SCC (Cri) 527]; Anil Kumar Yadav v. State (NCT of Delhi) [Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129 (2018) 3 SCC (Cri) 425]; Mahipal v. Rajesh Kumar [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118: (2020) 1 SCC (Cri) 558].]

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In P v. State of M.P. [P v. State of M.P., (2022) 15 SCC 211] decided by a three-Judge Bench of this Court [authored by one of us (Hima Kohli, J.)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) CrPC in the following words: (SCC p. 224, para 24)

"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 1995 SCC (Cri) 237]. To put it differently, in ordinary

circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."

Considerations for setting aside bail orders

28. The considerations that weigh with the appellate court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused."

Learned P.P. in course of hearing referred one citation of Hon'ble Supreme Court of India reported in **(2024) 10 SCC 768 [Ajwar v. Waseem and another]** wherein in para Nos.26 and 27 observed as under:

Relevant parameters for granting bail

26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. [Refer: Chaman Lal v. State of U.P.:(2004) 7 SCC 525; Kalyan Chandra Sarkar v. Rajesh Ranjan:(2004) 7 SCC 528; Masroor v. State of U.P.:(2009) 14 SCC 286, Prasanta Kumar Sarkar v. Ashis Chatterjee:(2010) 14 SCC 496; Neeru Yadav v. State of U.P.:(2014) 16 SCC 508; Anil Kumar Yadav v. State (NCT of Delhi):(2018) 12 SCC 129; Mahipal v. Rajesh Kumar :(2020) 2 SCC 118.]

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In *P v. State of M.P.:(2022) 15 SCC 211* decided by a three-Judge Bench of this Court [authored by one of us (Hima Kohli, J.)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) CrPC in the following words: (SCC p. 224, para 24)

"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial. To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."

Referring the aforesaid citations, Learned Counsel for the victim-applicant and Learned P.P. has drawn the attention of the Court that an unreasoned and perverse order of bail is always open for interference by the superior Court. Here in the given case, since the order of Learned CJM is silent as to why the bail was granted so the principles of aforesaid citations can be applied and the bail granted to the accused may be cancelled accordingly.

On the other hand, Learned Senior Counsel, Mr. S. Sarkar in course of hearing referred few citations. In **Satendra Kumar Antil v. Central Bureau of investigation and another** reported in **(2022) 10 SCC 51** wherein in para Nos.70 to 74 Hon'ble the Apex Court observed as under:

"70. The power of a court is quite enormous while exercising the power under Section 437.

Apart from the general principle which we have discussed, the court is also empowered to grant bail on special reasons. The said power has to be exercised keeping in view the mandate of Sections 41 and 41-A of the Code as well. If there is a proper exercise of power either by the investigating agencies or by the court, the majority of the problem of the undertrials would be taken care of.

71. The proviso to Section 437 warrants an opportunity to be afforded to the learned Public Prosecutor while considering an offence punishable with death, imprisonment for life, or imprisonment for seven years or more. Though, this proviso appears to be contrary to the main provision contained in Section 437(1) which, by way of a positive direction, prohibits the Magistrate from releasing a person guilty of an offence punishable with either death or imprisonment for life. It is trite that a proviso has to be understood in the teeth of the main provision. Section 437(1)(i) operates in a different field. The object is to exclude the offence exclusively triable by the Court of Sessions. Thus, one has to understand the proviso by a combined reading of Sections 437 and 439 of the Code, as the latter provision reiterates the aforesaid provision to the exclusion of the learned Magistrate over an offence triable exclusively by a Court of Sessions. To make the position clear, if the Magistrate has got the jurisdiction to try an offence for which the maximum punishment is either life or death, when such jurisdiction is conferred on the learned Magistrate, it goes without saying that the power to release the accused on bail for the offence alleged also can be exercised.

72. This Court in *Prahlad Singh Bhati v. State (NCT of Delhi)*: (2001) 4 SCC 280 has held: (SCC p. 284, para 7)

"7. Powers of the Magistrate, while dealing with the applications for grant of bail, are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Session, the Magistrate has no jurisdiction to grant bail unless the matter is covered by the provisos attached to Section 437 of the Code. The limitations circumscribing the jurisdiction of the Magistrate are evident and apparent. Assumption of jurisdiction to entertain the application is distinguishable from the exercise of the jurisdiction."

73. We wish to place reliance on the judgment of the Bombay High Court in *Balasaheb Satbhai Merchant Coop. Bank Ltd. v. State of Maharashtra*: 2011 SCC OnLine Bom 1261: (SCC OnLine Bom paras 13-14)

"13. At this stage, it may be useful to quote the observations of this Court in *Ambarish Rangshahi Patnigere v. State of Maharashtra*: 2010 SCC OnLine Bom 1968 referred supra, which reads thus: (SCC OnLine Bom para 18)

'18. It may be noted here that the learned counsel for intervener contended that the Magistrate did not have jurisdiction to grant bail because the offences under Sections 467 and 409 IPC, carry punishment which may be life imprisonment. According to the learned counsel, if the offence is punishable with sentence of death or life imprisonment, the Magistrate cannot grant bail under Section 437(1) CrPC, unless there are special grounds mentioned therein. He relied upon certain authorities in this respect including *Prahlad Singh Bhati v. State (NCT of Delhi)*:(2001) 4 SCC 280. In that case, offence was under Section 302 which is punishable with death sentence or life imprisonment and is exclusively triable by Court of Sessions. The offence under Section 409 is punishable with imprisonment for life or imprisonment for 10 years and fine. Similarly, the offence under Section 467 is also punishable with imprisonment for life or imprisonment for 10 years and fine. Even though the maximum sentence which may be awarded is life imprisonment, as per Part I of Schedule annexed to CrPC, both these offences are triable by a Magistrate of First Class. It appears that there are several offences including under Section 326 in the Penal Code, 1860 wherein sentence, which may be awarded, is imprisonment for life or imprisonment for lesser terms and such offences are triable by Magistrate of the First Class. If the Magistrate is empowered to try the case and pass judgment and order of conviction or acquittal, it is difficult to understand why he cannot pass order granting bail, which is interlocutory in nature, in such cases. In fact, the restriction under Section 437(1) CrPC is in respect of those offences which are punishable with alternative sentence of death or life imprisonment. If the offence is punishable with life imprisonment or any other lesser sentence and is triable by Magistrate, it cannot be said that Magistrate does not have jurisdiction to consider the bail application. In taking this view, I am supported by the old Judgment of Nagpur Judicial Commissioner's Court in *Tularam v. King Emperor*:1926 SCC OnLine MP 176 and also by the Judgment of the Kerala High Court in *Satyan v. State of Kerala*:1981 SCC OnLine Ker 147. In *Satyan*(supra), the Kerala High Court considered several earlier judgments and observed thus in paras 8 to 10:(*Satyan case*:1981 SCC OnLine Ker 147, SCC OnLine Ker).

"8. According to the learned Magistrate Section 437(1) does not empower him to release a person on bail if there are reasonable grounds for believing that he has committed an offence punishable with death or

an offence punishable with imprisonment for life. In other words the learned Magistrate has interpreted the expression 'offence punishable with death or imprisonment for life' in Section 437(1) to include all offences where the punishment extends to imprisonment for life. This reasoning, no doubt, is seen adopted in an old Rangoon Case H.M. Boudville v. King Emperor:1924 SCC OnLine Rang 21 while interpreting the phrase "an offence punishable with death or transportation for life" in Section 497 CrPC 1898. But that case was dissented from in Mohd. Eusoof v. King Emperors:1925 SCC OnLine Rang 73. The Rangoon High Court held that the prohibition against granting bail is confined to cases where the sentence is either death or alternative transportation for life. In other words, what the Court held was that the phrase "death or transportation for life" in Section 497 of the old Code did not extend to offences punishable with transportation for life only, it will be interesting to note the following passage from the above judgment: (Mohd. Eusoof cases(supra), SCC OnLine Rang para 9)

'9. It is difficult to see what principle, other than pure empiricism, should distinguish offences punishable with transportation for life from offences punishable with long terms of imprisonment; why, for instance, the detenu accused of lurking house trespass with a view to commit theft, for which the punishment is fourteen years' imprisonment, should be specially favoured as against the individual who has dishonestly received stolen property, knowing that it was obtained by dacoity, for which the punishment happens to be transportation for life? It cannot seriously be argued that the comparatively slight difference in degree of possible punishment, will render it morally less likely that the person arrested will put in an appearance in the one case rather than the other. On the other hand, the degree of difference is so great as between transportation for life and death as to be immeasurable. A prudent legislature will, therefore, withdraw from the discretion of the Magistracy cases in which, if guilt is probable, even a man of the greatest fortitude may be willing to pay a material price, however, exorbitant, for life.'

9. The above decision has been followed by the Nagpur High Court in *Tularam v. King Emperor*(supra).

"10. The reasoning applies with equal force in interpreting the phrase "offence punishable with death or imprisonment for life". So long as an offence under Section 326 is triable by a Magistrate of the First Class, there is no reason why it should be viewed differently in the matter of granting bail from an offence under Section 420 IPC for which the punishment extends imprisonment for 7 years or any other non-bailable offence for which the punishment is a term of imprisonment."

It would be illogical and incomprehensible to say that the Magistrate who can hold the trial and pass judgment of acquittal or conviction for the offences punishable with sentence of life imprisonment or lesser term of imprisonment, for example in offences under Sections 326, 409, 467, etc. cannot consider the application for bail in such offences. In fact, it appears that the restriction under Section 437(1)(a) is applicable only to those cases which are punishable with death sentence or life imprisonment as alternative sentence. It may be noted that in *Prahlad Singh Bhati*(supra), in para 6, the Supreme Court held that even though there is no legal bar for a Magistrate to consider an application for grant of bail to a person who is arrested for an offence exclusively triable by a Court of session, yet it would be proper and appropriate that in such a case the Magistrate directs the accused person to approach the Court of Session for the purposes of getting the relief of bail. This may be applicable to many cases, wherein the sentence, which may be awarded, is not even life imprisonment, but the offence is exclusively triable by court of Sessions for example offences punishable under Sections 306, 308, 314, 315, 316, 399, 400 and 450. Taking into consideration the legal position, I do not find any substance in the contention of Mr Bhatt, learned counsel for the intervener that merely because the offence is under Sections 409 and 467 IPC, Magistrate did not have jurisdiction to hear and grant the bail."

14. It may also be useful to refer the observations of this Court in *Ishan Vasant Deshmukh v. State of Maharashtra*:2010 SCC OnLine Bom 1593 referred supra, which read thus: (SCC OnLine Bom para 23)

'23. ... The observations of the Supreme Court that generally speaking if the punishment prescribed is that of imprisonment for life or death penalty, and the offence is exclusively triable by the Court of Sessions, the Magistrate has no jurisdiction to grant bail, unless the matter is covered by the provisos

attached to Section 437 of the Code. Thus, merely because an offence is punishable with imprisonment for life, it does not follow a Magistrate would have no jurisdiction to grant bail, unless offence is also exclusively triable by the Court of Sessions. This, implies that the Magistrate would be entitled to grant bail in cases triable by him even though punishment prescribed may extend to imprisonment for life. This judgment in Prahlad Singh Bhati case(supra) had not been cited before the Judge, who decided State of Maharashtra v. Rajkumar Kunda Swami:2001 SCC OnLine Bom 1171. Had this judgment been noticed by the Hon'ble Judge deciding that case, the observation that the Magistrate may not decide an application for bail if the offence is punishable with imprisonment for life would possibly would not have been made. In view of the observations of the Supreme Court in Prahlad Singh Bhati case(supra), it is clear that the view taken by J.H. Bhatia, J. in Ambarish Rangshahi Patnigere v. State of Maharashtra(supra) is in tune with the Judgment of the Supreme Court and therefore, the Magistrate would have jurisdiction to grant bail.' "

74. Thus, we would like to reiterate the aforesaid position so that the jurisdictional Magistrate who otherwise has the jurisdiction to try a criminal case which provides for a maximum punishment of either life or death sentence, has got ample jurisdiction to consider the release on bail."

Again, Learned Senior Counsel referred another citation of Hon'ble Supreme Court of India in **State of Gujarat v. Salimbhai AbdulGaffar Shaikh and others** reported in (2003) 8 SCC 50 wherein in para No.16 Hon'ble the Apex Court observed as under:

"16. The High Court has also invoked powers under Section 482 CrPC while granting bail to the respondents. Section 482 CrPC saves the inherent power of the High Court. The High Court possesses the inherent powers to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. The power has to be exercised to prevent abuse of the process of the court or to otherwise secure the ends of justice. But this power cannot be resorted to if there is a specific provision in the Code for the redressal of the grievance of the aggrieved party. (See Madhu Limaye v. State of Maharashtra.) There being a specific provision for grant of bail, the High Court clearly erred in taking recourse to Section 482 CrPC while enlarging the respondents on bail."

Learned Senior Counsel further referred another citation of Hon'ble Supreme Court of India reported in **(2020) 2 SCC 743 [Myakala Dharmarajam and others v. State of Telangana and another]** wherein in para Nos.5, 7 and 8 Hon'ble the Apex Court observed as under:

"5. We are informed at the Bar that the case has been committed for trial. The High Court allowed the applications filed for cancellation of bail on the ground that the Principal Sessions Judge did not consider the material available on record before granting bail to the appellants. The High Court further held that the criminal antecedents of the appellants were not taken into account by the trial court. That apart, the High Court accepted the submissions on behalf of Respondent 2 that the appellants indulged in threatening the witnesses after being released on bail.

7. The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice, etc. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken account by the court. The court has to only opine as to whether there is prima facie case against the accused. For the purpose of bail, the court must not undertake meticulous examination of the evidence collected by the police and comment on the same.

8. In *Raghubir Singh v. State of Bihar*:(1986) 4 SCC 481 this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to."

Referring the said citations, Learned Senior Counsel drawn the attention of the Court that once the bail is granted there is very least scope to cancel it and here in the case at hand, the victim-applicant or the prosecution could not place any supervening circumstances to reject the interim bail granted to the accused and urged for dismissal of the application filed by the victim-applicant for cancellation of bail.

I have heard both the sides at length and also perused the citations as referred by the parties. It is on record that by order dated 09.01.2025, the respondent-accused was granted interim bail by Learned CJM on 89th day but surprisingly from the order, it appears that at the time of granting bail, Learned CJM did not mention any specific grounds as to why the concession of bail was granted to the accused in such a grievous/heinous offence like murder. Here in the case at hand two murders were committed by the alleged accused according to the prosecution. It is the settled position of law that in granting bail in a heinous offence, specific reasons should be given by the concerned Court as to why the Court has exercised its jurisdiction to consider the bail application. In this case, on 89th day bail was granted by Learned CJM but from the order it appears that no cogent and justified grounds were reflected by Learned CJM as to why the bail was granted as required under Section 437(4) of Cr.P.C. Section 437(1) of Cr.P.C. describes as to when bail should be granted in a case of non-bailable offence. For the sake of convenience, I would like to refer herein below the provision of Section 437(1) of Cr.P.C.:

437. When bail may be taken in case of non-bailable offence.-

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of [a cognizable offence punishable with imprisonment for three years or more but not less than seven years]:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:]

[Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.]

Similarly, Section 437(4) of Cr.P.C. also provides as under:

4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its [reason or special reasons] for so doing.

From the aforesaid provisions of law, it is found that when Court can grant bail in a non-bailable offence.

From the citations relied upon the victim-applicant as well as prosecution, it appears that although it is the settled position of law that bail once granted, ought not to be cancelled in a mechanical manner but if the order itself is unreasoned or

perverse, in that case, there is scope on the part of the superior Court to interfere with the order.

Here in the case at hand after going through the entire case records and the submission of Learned Counsel for both the sides and also after perusing the citations as relied upon by the victim-applicant as well as the respondent-accused, it appears that Learned CJM by the said order dated 09.01.2025 mechanically granted bail to the accused without application of proper mind and without giving any justified reasons only on the ground of having custody of the accused for 89 days. As such, in the considered opinion of this Court, the order of bail cannot be sustained and accordingly the same stands cancelled and also the bail bond executed by the respondent-accused stands cancelled.

From the record, it appears that the case has already been committed to the Court of Learned Sessions Judge, West Tripura, Agartala and the Learned Sessions Judge by the earlier order extended the period of interim bail till 30.04.2025. So, the accused shall surrender before the Court of Learned Sessions Judge, West Tripura, Agartala on or before 05.05.2025 and Learned Sessions Judge, West Tripura, Agartala shall take the accused into custody and accordingly shall pass necessary remand orders time to time and shall also make all endeavour to dispose of the case giving top priority. In default of appearance of the accused, Learned Sessions Judge, West Tripura, Agartala shall be at liberty to ensure production of the accused in accordance with law.

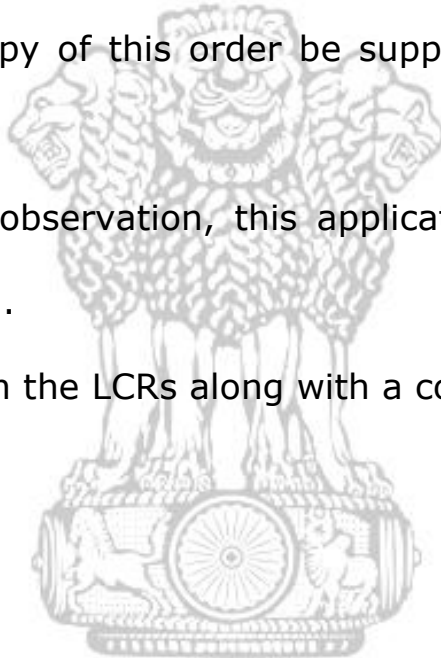
It is further ordered that in future Learned CJM, West Tripura, Agartala, shall ensure the production of charge-sheet to the respective Courts on the same day if the accused person or persons is/are remains in custody to avoid any legal confusion regarding the detention of the accused in custody.

A copy of this order along with photocopy of Annexure-R/2 and R/3 be transmitted to Learned CJM, West Tripura, Agartala by Registrar(Judicial) to verify the matter and to submit a report in the administrative side within 15(fifteen) days as alleged and raised by Learned Counsel for the victim-applicant.

Also, a copy of this order be supplied to Learned P.P. for information.

With this observation, this application for cancellation of bail stands allowed.

Send down the LCRs along with a copy of this order.



सत्यमेव जयते

JUDGE