

**HIGH COURT OF TRIPURA
AGARTALA
B.A. No.11 of 2025**

Hriday Ali (Age – 29 years),
S/O Jangsar Ali,
Resident of Purba Mog Pushkarani,
P.O.- Abani Riyangpara,
P.S.- R. K. Pur, District- Gomati Tripura.

**.... Petitioner on behalf of
Custody Accused Person**

Jangsar Ali (Age 50 Years)
S/O Late Asmat Ali,
Resident of Purba Mog Pushkarani,
P.O. – Abani Riyangpara,
P.S. – R. K. Pur, District- Gomati Tripura.

.... Custody Accused Person

Versus

The State of Tripura,
(Represented by the Secretary,
Home Department),
Government of Tripura, Agartala.

.....Respondent

For Applicant(s)	:	Mr. Janardhan Bhattacharjee, Adv. Mr. Sajib Ghosh, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

13/03/2025

Learned Counsel Mr. Janardhan Bhattacharjee assisted by Mr. Sajib Ghosh is present on behalf of the accused in custody. Learned P.P. Mr. Raju Datta appearing on behalf of the State-respondent is present along with the I.O.

Learned P.P. Mr. R. Datta further produced the Case Diary.

Heard both the sides at length.

Taking part in the hearing, Learned Counsel for the accused in custody, Mr. J. Bhattacharjee submitted that this present

accused was taken into custody in connection with this case on 29.11.2024 and since then till today he is lodging in jail.

It is further submitted that prior to 29.11.2024 the I.O. could not collect any material showing implication of the accused with the alleged crime. Nor there is any evidence on record showing any possession or constructive possession over the contraband items by the accused-in-custody. Rather Learned Counsel submitted that on that day he along with the owner of the seized vehicle appeared at P.S. when the I.O. was reluctant to release the vehicle that time some hot altercation took place and out of grudge the accused has been falsely implicated in this case.

Learned counsel further submitted that from the interrogation report of the arrested accused Rajani Debbarma, no incriminating evidence revealed against the present accused-in-custody and considering the materials on record Learned Counsel urged for releasing the accused on bail in any condition.

In support of his contention, Learned counsel also relied upon the judgment of the Hon'ble Supreme Court of India in **Arvind Kejriwal Vs. Central Bureau of Investigation** reported in **2024 INSC 687** wherein in Para Nos.40, 41, 42 and 43 Hon'ble the Apex Court observed as under:

"40. This Court has emphasized and re-emphasized time and again that personal liberty is sacrosanct. It is of utmost importance that trial courts and the High Courts remain adequately alert to the need to protect personal liberty which is a cherished right under our Constitution.

41. That being the position and having regard to the discussions made above, I am of the unhesitant view that the belated arrest of the appellant by the CBI is unjustified and the continued incarceration of the appellant in the CBI case that followed such arrest has become untenable.

42. In the circumstances, the judgment and order of the High Court dated 05.08.2024 in W.P.(CrI.) No. 1939 of 2024 is clarified to the above context while the judgment and order of the High Court

dated 05.08.2024 in Bail Application No. 2285 of 2024 is set aside.

43. Consequently, it is directed that the appellant shall be released on bail forthwith in the CBI case i.e. RC No.0032022A0053 dated 17.08.2022. In so far bail conditions are 31 concerned, this Court in the ED case i.e. in Criminal Appeal No. 2493 of 2024 has imposed several terms and conditions including clauses (b) and (c) vide the orders dated 10.05.2024 and 12.07.2024 which have been incorporated in clause (d) of paragraph 47(ii) of the judgment delivered by Justice Surya Kant. Though I have serious reservations on clauses (b) and (c) which debars the appellant from entering the office of Chief Minister and the Delhi Secretariat as well as from signing files, having regard to judicial discipline, I would refrain from further expressing my views thereon at this stage since those conditions have been imposed in the separate ED case by a two judge bench of this Court."

He also referred another citation of the Kolkata High Court in connection with **C.R.M. 2760 of 2021** wherein the accused was granted bail. In addition to that Learned Counsel also referred another citation of a Coordinate Bench of this High Court dated 20.08.2021 in **A.B. No. 58 of 2021** and finally urged for releasing the accused on bail in any condition.

"[10] I have considered the submissions of the counsel of the parties and perused the entire material available on record including the updated case diary. I have also taken into account the concern of the investigating agency as well as the right of accused to bail. It is true that section 37 of the NDPS Act puts some restrictions with regard to grant of bail to an accused charged with offence involving commercial quantity. But court is not powerless to grant bail in appropriate cases where if it appears to the court that there is no reasonable ground for believing that accused has been involved in the alleged offence."

It was further submitted that the rigor of Section 37 of NDPS Act will not be attracted against the present accused in custody and he has been falsely implicated. So Learned counsel urged for releasing the accused on bail in any condition.

On the other hand, the Learned P.P. taking part in the hearing submitted that on the basis of CDR analysis report the name of the accused in custody revealed. In addition to that from the

statement of the owner of the vehicle it transpires that this present accused hired the offending vehicle from her for the purpose of doing contraband business and in addition that he is also wanted in connection with another Ambassa P.S. case vide No. 29/2024 under Section 20(b)(ii)(C)/25/29 of NDPS Act, 1985. So he urged for rejection of the bail application on the ground that in this case huge quantum of contraband item was recovered.

It is further submitted by Learned P.P. that constructive possession is also not required in all cases. As such he relied upon one citation of the Hon'ble Apex Court in **Union of India Vs. Rattan Mallik Alias Habul** reported in **(2009) 2 SCC 624** wherein para no.16 Hon'ble the Apex Court observed as under:

"16.Merely because, according to the learned Judge, nothing was found from the possession of the respondent, it could not be said at this stage that the respondent was not guilty of the offences for which he had been charged and convicted. We find no substance in the argument of learned counsel for the respondent that the observation of the learned Judge to the effect that "nothing has been found from his possession" by itself shows application of mind by the learned Judge tantamounting to "satisfaction" within the meaning of the said provision. It seems that the provisions of the NDPS Act and more particularly Section 37 were not brought to the notice of the learned Judge."

Relying upon the same, Learned P.P. urged for rejection of the bail application.

I have heard both the sides at length and perused the record including the CD produced by I.O. Admittedly in this case no contraband item was directly seized from the possession of the accused. Even from the interrogation report of accused Rajani Debbarma, no allegation revealed against the present accused in custody, but from the CDR analysis report it appears that he had direct contact with the another co-accused of this case she is absconding and furthermore, from the statement of the owner of

that vehicle it appears that this present accused took the vehicle on hired rent basis on that relevant point of time and in earlier occasion also he took the vehicle from the owner and furthermore he is also involved in Ambassa P.S. Case No.29/2024 as mentioned above.

Situated thus, consider the materials on record, at this stage I find justification of further detention of the accused in custody. Accordingly, the bail application filed by the applicant is rejected.

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

The accused is to remain in J/C as before. The I.O. is discharged.

A copy of this order along with the C.D. be returned back to the I.O. for information.

The I.O. be asked to expedite investigation and to submit report.

JUDGE

MOUMITA
A DATTA

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Date: 2025.03.18
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Amrita