

**HIGH COURT OF TRIPURA
AGARTALA
A.B. No.32 of 2025**

Sri Bapi Roy,

S/O- Sri Nanda Roy, aged about 34 years,
Resident of Pratapgarh,
Basakpara, P.O.- Pratapgarh,
P.S.- East Agartala,
District- West Tripura.

.... Applicant(s)

Versus

The State of Tripura

.....Respondent(s)

For Applicant(s)	:	Mr. Sankar Lodh, Adv. Mr. Subham Majumder, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P. Mr. Rajib Saha, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

22/05/2025

This pre-arrest bail application is filed under Section 482(1) of BNSS for granting bail to the accused-applicant in connection with East Agartala Women PS Case No.010 of 2025 (2025 WEA 010) under Section 329/76/109 of BNS, 2023 with added Section 69 of BNS, 2023.

Heard Learned Counsel, Mr. S. Lodh, appearing on behalf of the accused-applicant and also heard Learned P.P., Mr. R. Datta, appearing on behalf of the State-respondent.

Taking part in the hearing, Learned defence counsel first of all drawn the attention of the Court that on the alleged day of incident the informant party of this case severely assaulted the applicant for which he sustained fatal injuries and accordingly, he was compelled to attend AGMC and GBP Hospital and on 05.03.2025 his wife laid one FIR to OC, East Agartala PS but no case was registered. Thereafter, the wife of the applicant submitted one

complaint to SP, West narrating all these things. But inspite of that no action was taken by police. Finally as per direction of the Court, today a report has submitted by the police authority stating that no case has been made out.

Learned Counsel, Mr. Lodh referring the same submitted that in view of the provision provided under Section 173 (4) of BNSS there is no scope on the part of SP to call for a report without registering any case since the offence disclosed commission of cognizable offence.

Learned Counsel, Mr. Lodh further submitted that initially on the basis of FIR laid by one Bishal Saha on 27.02.2025 the case was registered under Section 329/76/109 of BNS but on bare perusal of the same it appears no offence reveals punishable under Section 109 of BNS. But surprisingly to develop the prosecution case the prosecution came with a new story and added Section 69 of BNS which is also contrary to the prosecution case and further submitted that since there are material contradictions which emerges from the submission of the prosecution. So there is no scope to refuse the pre-arrest bail application filed by the accused-applicant and urged for granting pre-arrest bail.

On the other hand, Learned P.P. appearing on behalf of the State-respondent, first of all produced the Case Diary and also submitted a report as ordered earlier and submitted that on the allegation of the present accused-applicant no case is made out, as such, no case was registered all though the result of the enquiry was not committed to the accused-applicant.

Learned P.P. further submitted that considering the materials on record including the statement of the victim girl and her friend and also the medical report of the victim there is no scope to

presume the accused-applicant to be innocent at this stage and Learned P.P. further submitted that since the case is at the very initial stage of investigation. As such, the submission made by Learned Counsel for the applicant cannot be accepted at this stage because the same relates to trial and urged for rejection of the bail application.

Considered.

In this case, initially the prosecution was set into motion on the basis of an FIR laid by one Bishal Saha to OC, East Women PS on 27.02.2025 alleging *inter alia* that on that day at about 04.00 pm the accused-applicant tormented the wearing apparel of his sister i.e. the victim aged about 24 years (name withheld) and outraged her modesty and tried to kill her by strangulating her neck. That time local neighbouring people on hearing her hue and cry including his younger sister Neha Sarkar assembled therein and saved the victim. On the basis of that FIR, WEA PS Case No.10/25 under Section 329/76/109 of BNS was registered. Later on, on the basis of statement of the victim and also based on the statement recorded by the Learned Court and also the medical report of the victim, the IO submitted a prayer for adding of Section 69 of BNS in this case and accordingly the same prayer was allowed. On the last day, the SP, West Tripura District and the IO of the case appeared when the matter was discussed.

The investigation of the case is in progress. It appears that on the allegation of the wife of the accused-applicant no case has been registered which reveals from the report of the police authority. In this regard, I would like to refer herein below the provision of Section 173(3) and 173(4) of BNSS of 2023 which provides as under:-

"173. Information in cognizable cases.-

(3) Without prejudice to the provisions contained in section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence,-

(i) proceed to conduct preliminary enquiry to ascertain whether there exists a *prima facie* case for proceeding in the matter within a period of fourteen days; or

(ii) proceed with investigation when there exists a *prima facie* case.

(4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate."

It was the case of the applicant that initially his wife approached to OC, East Agartala Women PS, West Tripura but as no action was taken. So the matter was referred to SP who sought for report without registering any case.

I have perused the petition and the relevant medical papers submitted on behalf of the accused-applicant. It appears that, the OC of the concerned PS failed to discharge his duty properly. Even the SP of the District also failed to discharge his legal obligation in accordance with law.

It is surprising how the IO made prayer before the Court under Section 69 of BNS, 2023 without proper application of mind. It appears to this Court that the IO is not properly trained and conversant with the provisions of law to investigate of a case of this nature. The case is at the very initial stage of investigation. In Section 173(4) of BNSS scope is given to any person to take further

step in case of refusal to register any case by the concerned police official. Each case will proceed according to its own merit.

However, on perusal of the CD, it appears to this Court that right from the beginning, the IO failed to investigate the case properly which shows serious lapses on the part of the IO. But lapses on the part of IO cannot be a ground to consider bail to a person against whom there is evidence of forceful commission of rape upon the victim.

Situated thus, based on the available materials on record at this stage I find no scope to consider the pre-arrest bail application filed by the accused-applicant. Accordingly, the same stands rejected.

With this observation, this bail application stands disposed of.

Send down the CD to IO through Learned P.P. along with a copy of this order.

A copy of this order also be supplied to Learned P.P. to take up the matter with the DGP of Police, Tripura.

Also send down the LCR if any along with a copy of this order.

JUDGE

Amrita

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