

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No.26 of 2025

Saha Alam

Son of late Abdul Mujid, R/O-, Vill-
Kalshimura, P.S. Kalamchara, District-
Sepahijala, Tripura

.....**Petitioner(s)**

- Versus -

1. **Beauty Akter**

W/O- Mijanur Rahaman, R/O, Vill-
Kalshimura, P.S. Kalamchara, District-
Sepahijala, Tripura

2. **The State of Tripura,**

represented by the learned Public
Prosecutor, High Court of Tripura

..... **Respondent(s)**

For the Petitioner (s) : Mr. H.K. Bhowmik, Adv.

For the Respondent (s) : M. R. Saha, Addl. P.P

Date of hearing and delivery : **13.11.2025**
of Judgment & Order

Whether fit for reporting :

YES	NO
√	

HON'BLE MR. JUSTICE S.DATTA PURKAYASTHA

JUDGMENT & ORDER (ORAL)

Heard Mr. H.K. Bhowmik, learned counsel appearing for
the petitioner and Mr. R. Saha, Addl. P.P. appearing for the State.
None appears for the respondent No.1.

[2] Initially, the petitioner in case No.CR 03(C) of 2022 was
charged with committing an offence punishable under Section 323

of the IPC for allegedly attacking the respondent No.1, her elder daughter Ruma Akter (11 years) and younger daughter Tasnia Akter (6 years) by inflicting fists, blows and kicks etc. Upon completion of the trial, the learned Chief Judicial Magistrate, Sepahijala District on 28.03.2023 convicted the petitioner under Section 323 of the IPC but without imposing a sentence allowed him to be released on probation under the following terms:

"20. In the result, it is hereby held that prosecution has become successful in proving the guilt of the accused Saha Alam u/Sec. 323 of IPC beyond all shadows of reasonable doubt and as a result, I find accused Saha Alam guilty for committing the offence punishable u/Sec. 323 of IPC. Consequently, accused Saha Alam is convicted u/Sec. 323 of IPC.

21. Having regard to the circumstance of this case including the nature of the offence, age and character of convict, the convict Saha Alam is hereby released on probation for keeping peace and good behaviour for a period of one year. The convict is directed to execute a bond for keeping peace and good behaviour for an amount of Rs. 10,000/- with one surety of like amount and the convict shall remain under the supervision of the Probation Officer, Sonamura, Sepahijala District for a period of one year from the date of execution of the bond. If the convict fails to observe the condition of the bond, then he shall be called upon to receive the sentence to be inflicted. It is hereby further directed that the convict shall pay an amount of Rs. 1,000/- (One thousand) only to the complainant Beauty Akter as compensation in view of Section 5 of the Probation of Offenders' Act, 1958 on the date of execution of the bond for keeping peace and good behaviour."

[3] As per the said order, according to Mr. Bhowmik, learned counsel appearing for the petitioner, the petitioner executed a bond of Rs.10,000/- for keeping peace and good behaviour during the said probation period of one year and also deposited Rs.1,000/- to be paid to the complainant as compensation. In terms of the order dated 01.06.2023, the

petitioner was supposed to remain on probation under the supervision of the Probation Officer for one year from the said date. On that day the bond submitted by the appellant was actually accepted by Court in presence of Probation Officer. On that day, the probation officer was also directed to submit the status report regarding the conduct of the petitioner, once in every 3[three] months during the probation period and fixed the next date on 02.09.2023.

[4] On 02.09.2023, none was present and the regular Presiding Officer was also on leave and therefore, the date was shifted to 14.09.2023 for submission of the report by the Probation Officer. On 14.09.2023, the Probation Officer again did not appear and the Court asked him to submit a report on 17.10.2023. On that day, the report was submitted by the Probation Officer. The Probation Officer reported to the Court that as per the order of the court, the petitioner was supposed to appear once in every quarter but he did not appear and not even an intimation was submitted by the petitioner to him.

[5] Learned trial \Court taking note of the said report observed on 17.10.2023 that the convict had violated the terms and conditions of the bond executed by him under Section 4 of the Probation of Offenders Act, 1958 (for short, '*the Act*'), and therefore, notice was directed to be issued to his surety and the

appellant (the convict) was ordered to be summoned for his appearance on the next date. On the next date i.e. on 29.11.2023, the petitioner accordingly appeared before the trial Court.

[6] The learned trial Court thereafter, resorting to the provisions of Section 9(3) of the Act, observed that the petitioner had failed to observe the conditions of the bond submitted by him under Section 4 of the Act and also failed to file any bail application under Section 9(2) of the Act. Therefore, he was remanded to the judicial custody till his prayer for exonerating him from the liability of violation of conditions of the bond was heard. Next date was accordingly fixed on 05.12.2023.

[7] On 05.12.2023, the learned trial Court observed that the grounds stated by the petitioner namely, that he could not properly understand the terms and conditions of the bond executed by him and that on two occasions, he had gone to meet the Probation Officer, Sepahijala but he was out of the office, were not convincing. Accordingly, his petition for exoneration was rejected. On the same day, learned trial Court imposed sentence upon him to suffer simple imprisonment for 6[six] months for committing the offence punishable under Section 323 of the IPC with a further direction that the period of detention already undergone by him shall be set off from the substantive sentence.

[8] Thereafter, the petitioner preferred an appeal (Criminal Appeal No.08 of 2023) before the learned Sessions Judge, Sepahijala District and after hearing matter, learned Sessions Judge dismissed the said appeal on 10.04.2025.

[9] On perusal of the said order of the learned Sessions Judge, it is found that the said appeal was actually filed under Section 374 of the Cr.P.C. by the present petitioner against the order of learned trial Court, whereby he was ordered to undergo simple imprisonment for 6[six] months for commission of an offence punishable under Section 323 of the IPC, but while dismissing the appeal the learned Sessions Judge observed that it was an admitted fact that surety had failed to produce the convict before the Probation Officer and his bail bond amount of Rs.10,000/- had been forfeited. Therefore, as the surety had failed to produce the convict before the Probation Officer, learned trial Court was right in forfeiting the bail amount and correctly directed the surety to pay the forfeited bail amount and therefore, there was no illegality in the said order passed by the learned trial court. Consequently, the 'revision petition', being devoid of any merit, was being rejected.

[10] In view of the above observations and reasoning given by the learned Sessions Judge, it appears that it was totally a case of non-application of mind of the learned Sessions Judge.

When he was under obligation to hear the appeal filed by the convict-petitioner regarding the sentence of 6 months imprisonment imposed on him, the learned Sessions Judge did not decide the appeal on the grounds taken by the appellant, rather treated the said appeal as a revision petition, as if it was filed by the surety of the said convict.

[11] Challenging the said order, the present criminal revision petition is filed by the convict petitioner.

[12] Mr. Bhowmik, learned counsel submits that apart from such illegality committed by the learned Sessions Judge, there was also no specific direction issued by the learned trial Court requiring the appellant to appear before the Probation Officer once in every 3 months. Therefore, according to him, the order of the learned trial Court imposing punishment on the appellant itself was illegal. Learned counsel further submits that as per provisions of Section 9(3) of the Act, it was obligatory for the learned trial Court to impose, at best, a penalty of Rs.50/-, since it was the first time default committed by the petitioner. He also submits that the petitioner was in custody from 29.11.2023 to 15.12.2023 i.e. for 16 days and has already paid compensation of Rs.1,000/- to the victim. Therefore, the period undergone by him in incarceration may be treated as the sufferance of full sentence imposed upon him and he may be set at liberty. According to

learned counsel, the petitioner is a hexagenarian, aged about 65 years and is suffering from various ailments.

[13] Mr. Saha, learned Addl. P.P appearing for the State, raises an objection and also submits that the provisions of Clause(a) of sub Section 3 of Section 9 of the Act empower the Court to sentence a person for the original offence when the Court is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him and therefore, the learned trial Court was justified in passing the impugned order. Mr. Saha, learned Addl. P.P also expresses the view that the appeal filed by the petitioner was not properly heard and disposed of by the learned Sessions Judge in its true sense. Therefore, the matter may be remanded back to the learned Sessions Judge for deciding the appeal afresh. Learned Addl. P.P, however, admits that in terms of sub-Section 4 of Section 4 of the Act, no specific order was passed by the learned trial court directing the petitioner to appear before the Probation Officer once in every 3[three] months during the probation period.

[14] Mr. Saha, learned Addl. P.P relies on the paragraph Nos.51,52 & 53 of a decision of Calcutta High Court in the case of **Chittaranjan Khatua vs. State, 1989 Legal Eagle (CAL HC) 566** which are reproduced hereunder:

51. In dealing with a probationer for the offence for which the probation order was made the Court must deal with him in the light of all circumstances and conditions which existed at that time, not merely those that existed when he was first convicted. A probation order releases the offender from custody but required him to be under the supervision of a probation officer for a period of two years. On proof of the probationer's failure to comply with the terms of the order, the Court may sentence him for the original offence. In this case, the learned Assistant Sessions Judge did not hold, as contended by the learned Advocate for the petitioner, that because the petitioner was charged with an offence punishable u/s 304, Part II of the Indian Penal Code, his probation order was revoked and sentence was imposed for original offence. The learned Judge has taken into account all the facts and circumstances existing at that time. He was of the view that the condition of good behavior was violated. It is no doubt true that the probationer's failure to comply with the probation order has to be proved on evidence. In the case before us, it was not disputed that the petitioner was absconding when the First Information Report was lodged on 30th March, 1987, implicating him. This fact is also apparent from the order refusing to grant bail to the petitioner when he surrendered on 4th September, 1987. At the instance of the petitioner, the records in the other proceeding in which charge was framed against the petitioner were brought before the learned Additional Sessions Judge while dealing with the petitioner for violation of the conditions of the bond. We have referred to what the petitioner said in his petition opposing the prayer of the Public Prosecution for revocation of the probation order and dealing him with the original offence. He did not deny categorically the b(sic)h. He did not give and call evidence to rebut what was already on record. In the instant case the Court has reason to believe that the offender has failed to observe any of the conditions of the bond. Such belief was formed on the basis of the materials placed before the Court by one Srijib Das, the brother of the victim in the case where the petitioner was convicted and thereupon released on probation and the application made by the public prosecutor.

52. On the facts and circumstances of the case, we are of the view that the undisputed facts unmistakably point out that the petitioner failed to comply with the requirement of the Bond as regards good behaviour during the period of probation.

54. Mr. Bose then contended that the breach of condition of good behaviour ought to have been proved in the proceeding after giving the probationer opportunity of hearing. Since it was not done, the matter should be restored to the file of the learned Additional Sessions Judge for fresh consideration. In our view, this contention has no substance. Where the probationer does not deny the breach, the question of calling evidence does not arise. If he denies the breach, he must give and call evidence. The petitioner relied on the records which proved his failure to comply with the requirement of the law. In such a case, fresh hearing would serve no purpose. It will be a

meaningless pursuit for ensuring procedural formality as justice has not been denied to the probationer.

It appears that the said judgment was delivered in a different context. It was not a case in which there was no specific order of appearance of the convict once in three months, as in like the present case.

[15] This Court has taken consideration of the submissions of both the parties and also the materials placed on record. As already discussed above, no such direction from the side of the learned trial Court was there asking the petitioner to appear before the Probation Officer once in every 3[three] months, although it was incumbent upon the learned trial Court, as per sub Section 4 of Section 4 of the Act, to specify in the supervision order as to the conditions which the convict was required to observe and comply with. It is a failure on the part of the learned trial Court itself in giving such specific direction for compliance by the petitioner and therefore, the Court cannot expect performance or compliance of the same by the petitioner. The trial Court also did not even assign any reason as to why it has imposed sentence resorting to the provisions of Clause (a) of sub Section (3) of Section 9 of the Act without imposing any penalty in terms of sub Clause (b) of sub Section 3 of Section 9 of the Act when no material was there in the record that it was not the first default committed by the petitioner. Considering all these aspects, the

order dated 05.12.2023 passed by the learned trial Court appears to be illegal and is hereby set aside. The petitioner is already on bail, no further order of release is required.

Accordingly, the criminal revision petition is allowed and consequently, the order dated 10.04.2025 passed by the learned Sessions Judge, Sepahijala District, Sonamura in Criminal Appeal No.08 of 2023 is also set aside.

More than 2[two] years have elapsed from the date when the petitioner was kept under probation and meanwhile he has also suffered imprisonment for a certain period. He is a hexagenarian. As informed, he is now on bail. Considering all these aspects, the probation period is not being revived further. The petitioner is, therefore, set at liberty.

The revision petition is disposed of accordingly.

Pending application(s), if any, also stands disposed of.

JUDGE

SUJAY GHOSH Digitally signed by SUJAY GHOSH
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