HIGH COURT OF TRIPURA
AGARTALA
A.B. No.45 of 2025

Debabrata Dey @ Debu, (39),
S/O: Late Sushil Ch. Dey,
Resident of Bordowali near BOC,
Beside Yubak Sangha Club, P.S.- A.D. Nagar,
Pin-799003, District-West Tripura, Tripura.

.... Accused Petitioner

Versus

The State of Tripura

.....Respondent

For Applicant(s)	:	Mr. Gautam Choudhury, Adv. Ms. Ankita Pal, Adv. Mr. Biswajit Saikia, Adv. Mr. Arindam Baruah, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P. Mr. Rajib Saha, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

23/06/2025

This pre-arrest bail application under Section 438 of Code of Criminal Procedure, 1973 is filed for releasing the accused-petitioner Sri Debabrata Dey @ Debu on bail in connection with Mungiakami P.S. Case No.015/2021 under Sections 21(c)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 corresponding to Special (NDPS) Case No.13/2024.

Heard Learned Counsel Mr. Gautam Choudhury assisted by Learned Counsel Ms. Ankita Pal, Learned Counsel Mr. Biswajit Saikia and Learned Counsel Mr. Arindam Baruah appearing on behalf of the accused-petitioner and also heard Learned P.P., Mr. Raju Datta appearing on behalf of the State-respondent.

Taking part in the hearing, Learned Counsel for the accused-petitioner Mr. G. Choudhury submitted that the present

accused-petitioner has been falsely implicated in this case on the basis of statement of co-accused and the accused-petitioner is a reputed person of the locality and in this case warrant of arrest and thereafter proclamation was issued against him from the Court and challenging that order the accused-petitioner filed Criminal Petition No.18 of 2023 before this Court which was also dismissed by order dated 14.09.2023 and challenging that order the accused-petitioner thereafter preferred an SLP before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India in SLP (Crl.) No.15125/2023 by order dated 28.11.2023 was pleased to dismiss the order of proclamation and as such he has preferred this bail application to this Court and submitted that an interim protection may be granted so that he may face the trial of the case and urged for granting him bail till disposal of the case, by allowing this petition.

Learned Counsel in support of this contention, confined his arguments in 2 (two) phases. In the first phase of argument, he submitted that in the facts and given circumstance of the case there is scope for filing pre-arrest bail application and in support of his contention he relied upon few citations.

Learned Counsel referred one citation of Hon'ble the Supreme Court of India in ***Ravindra Saxena Vs. State of Rajasthan*** reported in ***(2010) 1 SCC 684*** wherein in Para Nos.7 to 11 Hon'ble the Apex Court observed as under:-

> **"7. We are of the considered opinion that the approach adopted by the High Court is wholly erroneous. The application for anticipatory bail has been rejected without considering the case of the appellant solely on the ground that the challan has now been presented.**
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> **8. We may notice here that the provision with regard to the grant of anticipatory bail was introduced on the recommendations of the Law Commission of India in its Forty-first Report dated 24-9-1969. The recommendations were considered by this Court in a**

Constitution Bench decision in *Gurbaksh Singh Sibbia v. State of Punjab*:[(1980) 2 SCC 565]. Upon consideration of the entire issue this Court laid down certain salutary principles to be followed in exercise of the power under Section 438 CrPC by the Sessions Court and the High Court. It is clearly held that the anticipatory bail can be granted at any time so long as the applicant has not been arrested. When the application is made to the High Court or the Court of Sessions it must apply its own mind on the question and decide when the case is made out for granting such relief.

9. In our opinion, the High Court ought not to have left the matter to the Magistrate only on the ground that the challan has now been presented. There is also no reason to deny anticipatory bail merely because the allegation in this case pertains to cheating or forgery of a valuable security. The merits of these issues shall have to be assessed at the time of the trial of the accused persons and denial of anticipatory bail only on the ground that the challan has been presented would not satisfy the requirements of Sections 437 and 438 CrPC.

10. In our opinion, the High Court committed a serious error of law in not applying its mind to the facts and circumstances of this case. The High Court is required to exercise its discretion upon examination of the facts and circumstances and to grant anticipatory bail "if it thinks fit". The aforesaid expression has been explained by this Court in Gurbaksh Singh case:[(1980) 2 SCC 565] as follows: (SCC p.583, para 18)

> **"18. … The expression 'if it thinks fit', which occurs in Section 438(1) in relation to the power of the High Court or the Court of Session, is conspicuously absent in Section 437(1). We see no valid reason for rewriting Section 438 with a view, not to expanding the scope and ambit of the discretion conferred on the High Court and the Court of Session but, for the purpose of limiting it. Accordingly, we are unable to endorse the view of the High Court that anticipatory bail cannot be granted in respect of offences like criminal breach of trust for the mere reason that the punishment provided therefor is imprisonment for life. Circumstances may broadly justify the grant of bail in such cases too, though of course, the court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal."**

11. The salutary provision contained in Section 438 CrPC was introduced to enable the court to prevent the deprivation of personal liberty. It cannot be permitted to be jettisoned on technicalities such as "the challan having been presented, anticipatory bail cannot be granted". We may notice here some more observations made by this Court in Gurbaksh Singh:[1980 SCC (Cri) 465] (SCC p. 585, para 26)

> **"26. We find a great deal of substance in Mr. Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the**

> **presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An overgenerous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restriction. The beneficent provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in Maneka Gandhi :[Maneka Gandhi v. Union of India, (1978) 1 SCC 248], that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a constitutional challenge by reading words in it which are not to be found therein.""**

Referring the same he drawn the attention of this Court that in view of the principle of law laid down by the Hon'ble Supreme Court, there is scope for applying pre-arrest bail at this stage.

He also relied upon another citation of the Hon'ble Apex Court in ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others*** reported in ***(2011) 11 SCC 694*** wherein in Para Nos.10, 14, 41, 94, 98, 101, 112 and 113 Hon'ble the Apex Court further observed as under :-

> **"10. The Law Commission of India, in its 41st Report dated 24-9-1969 pointed out the necessity of introducing a provision in the Code of Criminal Procedure enabling the High Court and the Court of Session to grant "anticipatory bail". It observed in Para 39.9 of its Report (Vol.V) and the same is set out as under:**
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> > **"39.9. Anticipatory bail.- The suggestion for directing the release of a person on bail prior to his arrest (commonly known as 'anticipatory bail') was carefully considered by us. Though there is a conflict of judicial opinion about the power of a court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cause for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from**

> **false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail."**

14. It is clear from the Statement of Objects and Reasons that the purpose of incorporating Section 438 in CrPC was to recognize the importance of personal liberty and freedom in a free and democratic country. When we carefully analyse this section, the wisdom of the legislature becomes quite evident and clear that the legislature was keen to ensure respect for the personal liberty and also pressed in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court.

41. It can be found that "liberty" generally means the prevention of restraints and providing such opportunities, the denial of which would result in frustration and ultimately disorder. Restraints on man's liberty are laid down by power used through absolute discretion, which when used in this manner brings an end to "liberty" and freedom is lost. At the same time "liberty" without restraints would mean liberty won by one and lost by another. So "liberty" means doing of anything one desires but subject to the desire of others.

94. The proper course of action ought to be that after evaluating the averments and accusation available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the bail application or confirm the initial order of granting bail.

The court would certainly be entitled to impose conditions for the grant of bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of bail any time if liberty granted by the court is misused. The bail granted by the court should ordinarily be continued till the trial of the case.

98. The court which grants the bail has the right to cancel the bail according to the provisions of the General Clauses Act but ordinarily after hearing the Public Prosecutor when the bail order is confirmed then the benefit of the grant of the bail should continue till the end of the trial of that case. The judgment in Salauddin Abdulsamad Shaikh:(1996) 1 SCC 667 is contrary to the legislative intent and the spirit of the very provisions of the anticipatory bail itself and has resulted in an artificial and unreasonable restriction on the scope of enactment contrary to the legislative intention.

101.The court does not use the expression "anticipatory bail" but it provides for issuance of direction for the release on bail by the High Court or the Court of Sessions in the event of arrest. According to the aforesaid judgment of Salauddin Case : (1996) 1 SCC 667, the accused has to surrender before the trial court and only thereafter he/she can make prayer for grant of bail by the trial court. The trial court would release the accused only after he has surrendered.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

Referring the same he further submitted that in view of the aforesaid observation of the Hon'ble Apex Court, there is scope

for granting pre-arrest bail to the accused in the given facts and circumstances of the case.

He further referred another citation of the Hon'ble Supreme Court of India in ***Dataram Singh Vs. State of Uttar Pradesh and Another*** reported in ***(2018) 3 SCC 22*** wherein in Para Nos.3 and 4 of Hon'ble the Apex Court observed as under :-

> **"3. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge-sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436-A in the Code of Criminal Procedure, 1973.**
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> **4. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in Inhuman Conditions in 1382 Prisons, In re:(2017) 10 SCC 658."**

Again Learned Counsel referred another citation of the Hon'ble Supreme Court of India in ***Sekaran Vs. The State of Tamil Nadu*** reported in ***(2024) 2 SCC 176*** wherein in Para No.30, Hon'ble the Apex Court observed as under:-

> **"30. Although not brought to our notice in course of arguments, it is revealed from the oral testimony of PW-11 that the appellant could be apprehended 3 (three) years after the incident from Puliyur road**

> **junction in 91 km. away from Ambalakali) in Kerala after vigorous search. However, abscondence by a person against whom an FIR has been lodged and who is under expectation of being apprehended is not very unnatural. Mere absconding by the appellant after alleged commission of crime and remaining untraceable for such a long time itself cannot establish his guilt or his guilty conscience. Abscondence, in certain cases, could constitute a relevant piece of evidence, but its evidentiary value depends upon the surrounding circumstances. This sole circumstance, therefore, does not enure to the benefit of the prosecution."**

Citing all the aforesaid references/citations, Learned Counsel drawn the attention of the Court that considering the facts and circumstance of the case and the materials on record and also the fact that in this case charge-sheet is submitted, the prayer of the petitioner accused may be allowed by granting him pre-arrest bail.

In the second phase of argument, Learned Counsel submitted that during investigation the I.O. could not collect any materials showing direct implication of the accused with the alleged crime. Only on the basis of statement of co-accused and telephonic conversation made by the accused-petitioner, he has been falsely implicated in this case and there is/are no materials in the charge-sheet for his custodial detention. Furthermore, during investigation the I/O could not collect any sort of oral/documentary evidence on record to show that the accused is directly involved in this case. So, Learned Counsel urged for releasing him on bail in any condition to enable him to face trial of the case.

In support of his contention, Learned Counsel again submitted that in the case at hand there is/are no materials on record to justify detention of the accused in custody and furthermore prosecution in this case has failed to fulfill the twin conditions as required under Section 37 of NDPS Act and moreso the present accused-petitioner is not FIR named and no contraband item is/was recovered from his possession for his involvement with the offences

as alleged and as such, there is no bar to release the accused on bail in any condition.

In this regard, furthermore Learned Counsel relied upon another Judgment of High Court of Delhi in ***Vinay Dua Vs. State Govt. of NCT of Delhi*** reported in **2025 SCC OnLine Del 4534** wherein Para No.19, the Hon'ble High Court of Delhi observed as under:-

> **"19. It is pertinent to note that the allegations against the applicants is essentially based on disclosure statement of the co-accused persons. As held by the Hon'ble Apex Court in Tofan Singh v. State of Tamil Nadu: (2021) 4 SCC 1, disclosure statements made under Section 67 of the NDPS Act are inadmissible as evidence unless corroborated by independent material. The relevant paragraphs of the said judgment are set out below:-**
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> > ***"155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.***
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> > ***156. The judgment in Kanhaiyalal then goes on to follow Raj Kumar Karwal in paras 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overrules by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overrules for the reasons given by us.***
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> > ***157. On the other hand, for the reasons given by us in this judgment, the judgments or Noor Aga and Nirmal Singh Pehlwan v. Inspector, Customs are correct in law.***
> >
> > ***158. We answer the reference by stating:***
> >
> > ***158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.***
> >
> > ***158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.""***
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> **(emphasis supplied)**

Referring the same Learned Counsel submitted that on the basis of statement of co-accused, there is no scope to presume the accused-petitioner to be involved with the alleged case.

Learned Counsel again relied upon another Judgment of the Hon'ble the High Court of Delhi in connection with **Bail Application No.3023/2024** in ***Abdul Rab Vs. Narcotics Control Bureau*** reported in **2025 SCC OnLine Del 293** wherein in Para No.23, the Hon'ble High Court of Delhi observed as under:-

> **"23. At this stage, there is no other evidence to show that the applicant is involved in any manner with the co-accused persons. Admittedly no recovery has been affected from the applicant and in such circumstances merely because the applicant was allegedly in tough with the co-accused persons, the bar of Section 37 of the NDPS Act is not attracted. The Courts are not expected to accept every allegation made by the prosecution as a gospel truth. Mere contact with other co-accused person who was found in possession of contraband cannot be treated to be corroborative material in absence of substantive material found against the accused."**

Finally, Learned Counsel urged for releasing the accused on bail in any condition.

On the other hand, Learned P.P. appearing on behalf of the State-respondent strongly opposed the bail application and submitted that in this case from the act and conduct of the accused petitioner it appears that he never surrendered before the Court in spite of issuing of warrant of arrest. The Learned Court below initially issued warrant of arrest against him but that could not be executed. After that, proclamation was issued against him and challenging that order of proclamation, the accused-petitioner approached to this High Court but that petition was rejected. Thereafter, the present accused-petitioner again approached to Hon'ble Supreme Court of India and although Hon'ble the Supreme Court made infructuous the order of proclamation but did not consider his application for granting him bail and ultimately dismissed his SLP and furthermore, Learned

P.P. submitted that considering the materials on record and the conduct of the accused at this stage there is no scope to grant him bail.

In support of his contention, Learned P.P. relied upon one citation of the Hon'ble Supreme Court of India in ***Srikant Upadhyay and Others Vs. State of Bihar and Another*** reported in ***2024 SCC OnLine SC 282*** wherein Para Nos.24 and 25, Hon'ble the Apex Court observed as under:-

> **"24. There can be no room for raising a contention that when an application is filed for anticipatory bail, it cannot be adjourned without passing an order of interim protection. A bare perusal of Section 438 (1), Cr.P.C., would reveal that taking into consideration the factors enumerated thereunder the Court may either reject the application forthwith or issue an interim order for the grant of anticipatory bail. The proviso thereunder would reveal that if the High Court or, the Court of Sessions, as the case may be, did not pass an interim order under this Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest the person concerned without warrant, on the basis of the accusation apprehended in such application. In view of the proviso under Section 438(1), Cr. P.C., it cannot be contended that if, at the stage of taking up the matter for consideration, the Court is not rejecting the application, it is bound to pass an interim order for the grant of anticipatory bail. In short, nothing prevents the court from adjourning such an application without passing an interim order. This question was considered in detail by a Single Bench of the High Court of Bombay, in the decision in Shrenik Jayantilal Jain v. State of Maharashtra Through EOW Unit II, Mumbai:[2014 SCC OnLine Bom 549] and answered as above and we are in agreement with the view that in such cases, there will be no statutory inhibition for arrest. Hence, the appellants cannot be heard to contend that the application for anticipatory bail filed in November, 2022 could not have been adjourned without passing interim order. At any rate, the said application was rejected on 04.04.2023. Pending the application for anticipatory bail, in the absence of an interim protection, if a police officer can arrest the accused concerned how can it be contented that the court which issued summons on account of non-obedience to comply with its order for appearance and then issuing warrant of arrest cannot proceed further in terms of the provisions under Section 82, Cr. P.C., merely because of the pendency of an application for anticipatory bail. If the said position is accepted the same would be adopted as a ruse to escape from the impact and consequences of issuance of warrant for arrest and also from the issuance of proclamation under Section 82, Cr.P.C., by filing successive applications for anticipatory bail. In such circumstances, and in the absence of any statutory prohibition and further, taking note of the position of law which enables a police officer to arrest the applicant for anticipatory bail if pending an application**

> **for anticipatory bail the matter is adjourned but no interim order was passed. We have no hesitation to answer the question posed for consideration in the negative. In other words, it is made clear that in the absence of any interim order, pendency of an application for anticipatory bail shall not bar the Trial Court in issuing/proceeding with steps for proclamation and in taking steps under Section 83, Cr. P.C., in accordance with law.**
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> **25. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant."**

Referring the same, Learned P.P. drawn the attention of the Court that since warrant of arrest is still pending against the accused and he is evading to police arrest. Furthermore, this present accused petitioner is also involved in another case of Panisagar in which case he has been charge sheeted and thus it appears that the accused petitioner is a habitual offender and considering the materials on record at this stage there is no scope to release him on pre-arrest bail and furthermore, since in this case charge-sheet is submitted and there is materials against the accused, so at this stage his plea for granting concession of pre-arrest bail cannot be granted to him and urged for dismissal of the pre-arrest bail application.

I have heard detailed arguments of both the sides at length and perused the citations as referred by both the sides. As already stated that at the time of hearing, Learned counsel for the appellant made two sets of arguments. In one set of argument he submitted that in such a given situation pre-arrest bail application is maintainable which Learned P.P. opposed but the citations as referred by Learned Counsel for the accused petitioner appears to be appropriate and in my considered view, there is no bar on the part of the accused petitioner to approach for pre-arrest bail and accordingly in view of the principle of law laid down by the Hon'ble Apex Court in the aforenoted cases (supra) it appears to this Court that there is scope for filing anticipatory bail/pre-arrest bail by the accused-petitioner.

Now regarding granting of pre-arrest bail, I have heard both the sides and perused the materials on record. It appears that as per order dated 14.09.2022 on the prayer of I/O, Learned Special Judge (NDPS), Khowai Tripura District, Khowai issued warrant of arrest against him and thereafter as the warrant could not be executed so by order dated 10.07.2023 proclamation was also issued. Challenging that proclamation the accused-petitioner approached to this Court by filing a petition under Section 482 of Cr.P.C. for quashing the order dated 10.07.2023 passed by Learned Special Judge, Khowai Tripura District, Khowai. This High Court by order dated 14.09.2023 in connection with Crl. Petn. No.18/2023 dismissed the said petition and after that the present petitioner accused went to the Hon'ble Supreme Court of India and Hon'ble Supreme Court by order dated 28.11.2023 passed in SLA (Crl.) No.15125/2023 dismissed the said petition with the following observation:-

> **"However, the impugned proclamation order issued against the petitioner should have no bearing on the other legal proceedings which the petitioner might wish to pursue, in connection with the FIR No.2021/MGK/015."**

But inspite of that, the accused petitioner did not surrender before the Court nor the police official could execute the warrant of arrest issued against him.

In this case, the prosecution was set into motion on the basis of one Suo-moto complaint laid by one S.I. Ranjit Das of Mungiakami P.S. dated 30.05.2021 to OC, Mungiakami P.S., Khowai, Tripura alleging inter alia that on 30.05.2021 at about 0535 hrs he along with staff was discharging vehicle checking duty at 37 Miles near Lord Shiva temple under Mungiakami PS. At that time he signaled a 10 wheeler dumber B/R No.AS01DC1315 which was coming from Ambassa side for routine checking. The vehicle was driven by one Manik Sarkar. Seeing the police party the driver started shivering and his conduct made some suspicion. Accordingly, they checked the documents of the vehicle and conducted through checking in the vehicle. During checking some packets of some phensedyl bottles, they have found inside the vehicle and accordingly they detained the driver along with the aforesaid vehicle with phensedyl bottles. Before checking 01 (one) Mahindra Marazzo car B/R No.TR07C0299 was suspiciously followed by the dumper and when the phensedyl bottles were found out the driver and another person of the under checking car B/R No.TR07C0299 became furious and fled away in rashness leaving driving licence and other documents lying with him. He guarded the detained dumper and driver at the spot and chased the said car B/R No.TR07C0299 till Teliamura to nab them. But it disappeared. He also searched in all probable routes and also alerted naka points under Khowai District. Thereafter, he returned to the spot at about 0935 hrs. In the

meantime, the fact informed to OC, MGK PS and the SDPO, Teliamura over mobile. After sometime, the SDPO, Teliamura also reached at the spot and during checking they recovered 14,400 (fourteen thousand four hundred) bottles of Phensedyl Cough linctus. Each bottles contained 100 ml and packed in 144 numbers of paper carton from the said vehicle. And as the driver could not show any documents in support of carrying those contraband items so they seized the same along with the driver of the vehicle and hence he laid the FIR. On the basis of the FIR, MGK PS Case No.15/2021 under Section 21(c)/25/29 of the NDPS Act, 1985 was registered.

In course of investigation, finding the involvement of the present petitioner accused, the I/O submitted a prayer to the Court for issuing a warrant of arrest against him as already stated. Some other persons were arrested and finally on conclusion of investigation the I/O has submitted charge-sheet and by order dated 10.04.2024 cognizance of offence punishable under Section 21(c)/25/29 of NDPS Act, 1985 against (1) Manik Sarkar S/O Lt. Sunil Sarkar, (2) Partha Dey S/O Shri Monoranjan Dey, (3) Tanmoy Bhattacharjee @ Raju S/O Lt. Manoranjan Bhattacharjee, (4) Debabrata Dey @ Debu S/O Lt. Sushil Ch. Dey and (5) Apu Ranjan Das S/O Shri Subodh Ch. Das. By this time accused Manik Sarkar and Partha Dey have been granted regular bail and accused Tanmoy Bhattacharjee have been granted interim bail and warrant of arrest issued against this present accused petitioner and one Apu Ranjan Das is still pending for execution. In the meantime, order of attachment has been issued against this present accused-petitioner by order dated 22.09.2023. The conduct of the accused was not at all satisfactory. Even he has been charge sheeted in connection with Panisagar P.S. Case No.22 of 2018 wherein chargesheet No.31/2019 dated 20.08.2019 is filed

against him along with other accused persons and the case was later on numbered as Spl.(NDPS) 96 of 2019. The case is presently pending for trial and due to non appearance of the accused and another, the Learned Trial Court would not be able to proceed further with the case.

In this regard, Hon'ble the Apex Court of India in a case reported in ***State by the Inspector of Police Vs. B. Ramu*** reported in ***2024 SCC OnLine SC 4073*** in para Nos.8 to 12 observed as under:-

> **"8. Section 37 of the NDPS Act deals with bail to the accused charged in connection with offence involving commercial quantity of a narcotic drug or psychotropic substance. The provision is reproduced hereinbelow for the sake of ready reference: -**
>
> > **"[37. Offences to be cognizable and non-bailable.- (1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974),-**
> >
> > > **(a) every offence punishable under this Act shall be cognizable;**
> > >
> > > **(b) no person accused of an offence punishable for [offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-**
> > >
> > > > **(i) the Public Prosecutor has been given an 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.**
> >
> > **(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974), or any other law for the time being in force on granting of bail]"**
>
> **9. A plain reading of statutory provision makes it abundantly clear that in the event, the Public Prosecutor opposes the prayer for ball either regular or anticipatory, as the case may be, the Court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.**
>
> **10. It is apposite to note that the High Court not only omitted to record any such satisfaction, but has rather**

> **completely ignored the factum of recovery of narcotic substance (ganja), multiple times the commercial quantity. The High Court also failed to consider the fact that the accused has criminal antecedents and was already arraigned in two previous cases under the NDPS Act.**
>
> **11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.**
>
> **12. For entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act."**

From the aforesaid principle of law laid down by the Hon'ble Apex Court and also the citation as relied upon by the Learned P.P. present for the prosecution in the aforenoted case ***Srikant Upadhyay and Others Vs. State of Bihar and Another*** **(Supra)** it appears to this Court that since the accused petitioner is charge sheeted in this case and there is evidence on record that previously he was also involved in some other cases as mentioned above and in course of investigation he did not cooperate with the investigating agency. Even the accused petitioner never did appear before the Trial Court to facilitate the I/O to proceed with the investigation of the case and from the conduct of the accused there is no scope to give any favourable presumption in favour of the accused petitioner as provided under Section 37 of NDPS Act and as such considering the materials on record at this stage I do not find any scope to consider concession of granting pre-arrest bail in favour of the present petitioner accused.

Accordingly, the pre-arrest bail application filed by the accused petitioner stands rejected.

The accused petitioner shall surrender before the Learned Trial Court on or before the next date and may pray for bail before the Learned Trial Court below and the Learned Trial Court below shall

without being biased by the observation made by this Court consider to dispose of the case in accordance with law and proceed with the trial of the case since chargesheet is submitted.

With this observation, the present petition stands disposed of.

Send down the LCR to the Learned Trial Court along with a copy of this order.

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

JUDGE

HIGH COURT OF TRIPURA
सत्यमेव जयते

Amrita

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