

**HIGH COURT OF TRIPURA
AGARTALA**
Crl.A.No.10 of 2025 in I.A.01 of 2025

Sri Junab Ali,
son of Late Jabbar Ali,
resident of Kala Miah Para, Telkajla,
Barphatar, P.S. Sonamura, District-Sepahijala

---- Appellant(s)

Versus

The State of Tripura,
represented by Secretary,
Department of Home,
Government of Tripura,
Agartala

----Respondent(s)

For Appellant(s)	: Mr. Anjan Kanti Paul, Adv.
For Respondent(s)	: Mr. Raju Datta, P.P. Mr. Rajib Saha, Addl. P.P.
Date of Hearing & Judgment & Order	: 04.07.2025
Whether fit for reporting	: YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

This appeal is filed under Section 449 of Cr.P.C. is filed challenging the order dated 30.06.2023 and order dated 24.02.2025 passed by Learned Sessions Judge, Dhalai Judicial District, Ambassa in connection with Case No.Criminal Misc.34/2023 (arising out of Special NDPS Case No.17/2023).

[02] Heard Mr. Anjan Kanti Paul, Learned counsel appearing on behalf of the petitioner-appellant as well as Mr. Raju Datta, Learned P.P. and Mr. Rajib Saha, Learned Addl. P.P. appearing on behalf of the State-respondent.

[03] At this time Learned counsel for the appellant-petitioner submitted that the petitioner-appellant is a day labourer by profession. He stood as bailor for the accused Gopal Sarkar @ Suman on 22.12.2022 in Case No.Special(NDPS)17/2023 and thereafter on 01.06.2023 on filing of charge

sheet cognizance of offence was taken by the Court of Learned Special Judge (NDPS), Dhalai Judicial District, Ambassa. But as the accused remained absent before the Court, so, by order dated 27.06.2023 warrant of arrest was issued against the accused by the Learned Special Judge(NDPS) and an order was passed for drawing up of separate proceeding under 446 of Cr.P.C. against the present petitioner-appellant. Thereafter, in the separate proceeding the show cause notice was issued upon him but that could not be served. Thereafter by order dated 16.01.2025 bailable warrant of arrest was issued against the surety and accordingly, he appeared before the Learned Special Judge by order dated 24.02.2025 and submitted that in spite of his efforts, he could not produce the accused before the Court. So, Learned Special Judge asked the O/C of the concerned P/S to realize the forfeited amount from the surety. Thereafter, by order dated 10.06.2025 distress warrant of arrest was issued against him. Hence, the appellant approached this Court invoking Section 449 of Cr.P.C. challenging the orders as aforesaid. He further submitted that the petitioner-appellant is a very poor person and he is not in a position to pay the entire forfeited bail amount and in the meantime the accused have been arrested and he is languishing in jail for facing trial.

[04] On the other hand, Learned P.P. opposed the submission made by Learned counsel for the appellant and submitted that the conduct was not at all satisfactory and he stood as bailor for the accused in a case under NDPS Act and due to non-production of the accused by the surety Learned Court below could not proceed with the trial on time and urged for dismissal of this appeal.

[05] I have perused the records of the Learned Trial Court both i.e. the Special NDPS Case No.17/2023 and also the connected Criminal Misc. Case bearing No.34/2023 drawn up under Section 446 of Cr.P.C. It appears that the manner in which the Learned Trial Court proceeded to realize the forfeited amount was not proper. For the sake of convenience I would like to refer herein below the relevant provision of Section 446 of Cr.P.C. which reads as under :

"446. Procedure when bond has been forfeited.-(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited,

the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation. - A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

[Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]

(3) The Court may, after recording its reasons for doing so, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved."

[06] Further, I would also like to refer herein below the relevant provision of Section 421 of Cr.P.C. which also provides as under :

"421. Warrant for levy of fine.

(1)When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may -

(a)issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b)issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter :

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.

(2)The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3)Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law :

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.”

[07] It appears that for recovery of forfeited bail bond amount first of all show cause notice be issued and thereafter as per sub-Section-2 of Section 446 of Cr.P.C. necessary order would be passed for recovery of the amount as provided under Section 421 of Cr.P.C., where there are also two modes to recover the amount : (a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender and (b) issue a warrant to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter.

[08] On bare perusal of Section 421 of Cr.P.C. it appears that Court may either or both of the aforesaid ways may proceed to recover the amount. If for any reason the penalty cannot be recovered, then there is power of the Court for passing appropriate order for imprisonment in Civil jail for a term which may extend to six months.

[09] Here in the case at hand, Learned Trial Court by order dated 27.06.2023 although passed an order for drawing up of proceeding under Section 446 of Cr.P.C. But thereafter by order dated 16.01.2025 directly issued bailable warrant against him without forfeiting the bond amount and later on, by order dated 10.06.2025 issued distress warrant of arrest against him which appears that in applying the provisions of law Learned Trial Court mistakenly overlapped the provisions. However, Learned counsel for the appellant did not raise this point at the time of hearing rather urged for recalling the distress warrant of arrest and bailable warrant of arrest and the appellant also challenged the order dated 23.06.2023 i.e. the initial order of drawing up of proceeding and subsequent order dated 24.02.2025. But did not challenge the order dated 16.01.2025 and subsequent order dated 10.06.2025 rather urged for merely allowing him to deposit portion of forfeited bond amount. But it is

the admitted position that this present petitioner appellant stood as bailor for the accused who is presently lodging in jail on and from 07.10.2024.

[10] So, after hearing both the sides and considering the facts and circumstances of the case it is ordered that the petitioner appellant be asked to deposit Rs.40,000/- out of the forfeited bail amount of Rs.1,00,000/- and the balance amount of forfeited bail amount be hereby remitted accordingly under Section 446(3) of Cr.P.C. The appellant be asked to deposit the amount to the Learned Trial Court on or before 15.07.2025 in cash and in that event Learned Trial Court shall recall all the warrants issued against him and the fine money if realised be deposited to the treasury by challan by the concerned Trial Court. Further, in the event of deposit of the forfeited bail amount by the appellant surety the entire proceeding under Section 446 of Cr.P.C. would come to an end. No further proceeding would be carried out. In case of non-compliance of order by the appellant, Learned Trial Court will proceed as per law.

With this observation, the present appeal stands disposed of accordingly.

Send down the records of the Learned Trial Court both Special(NDPS)Case No.17/2023 and Criminal Misc. Case No.34/2023 along with a copy of this order. Also furnish a copy of this order to the Learned counsel for the appellant for information and compliance and also supply a copy of this order to Learned P.P for the State.

Pending application is also disposed of.

JUDGE

MOUMITA
A DATTA

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MOUMITA DATTA
Date: 2025.07.08
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