

**HIGH COURT OF TRIPURA
AGARTALA
B.A.58 of 2025**

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

----Petitioner(s)

Versus

1. Khairul Islam,
son of Najrul Islam,
resident of Santipara,
P.O.-Agartala, P.S.-East Agartala,
District-West Tripura

2. Najrul Miah,
son of Late Siraj Miah,
resident of Santipara,
P.O.-Agartala, P.S.-East Agartala,
District-West Tripura

----Respondent(s)

For Applicant(s)	: Mr. Raju Datta, P.P.
For Respondent(s)	: Mr. Pijush Kanti Biswas, Sr. Adv. Mr. Hare Krishna Bhowmik, Adv. Mr. Rishiraj Nath, Adv. Mr. Chinfru Mog Samung, Adv. Mr. Jilu Rahaman, Adv. Mr. Santtipriya Bhattacharjee, Adv. Mr. Pujan Biswas, Adv.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

15/09/2025

This application under Section 483(3) of BNSS read with Section 528 of BNS is filed for cancellation of bail granted to the respondent accused persons namely Khairul Islam and Najrul Miah by Learned Additional Sessions Judge, West Tripura, Agartala in connection with B.A.No.104/2025 dated 11.07.2025 in reference to East Agartala P.S. Case No.61/25 under Sections 61/109/148/118(2)/3(5)/196/192 of BNS.

[02] Heard Learned P.P., Mr. R. Datta appearing on behalf of the State-appellant/applicant and also heard Learned senior

counsel, Mr. P.K. Biswas assisted by Mr. H.K. Bhowmik, Learned counsel and other Learned counsels appearing on behalf of the respondent accused persons. As ordered earlier, today Learned P.P. has produced the case diary and by this time, we have also received the record from the Learned Trial Court below.

[03] Taking part in the hearing, Learned P.P. first of all drawn the attention of the Court referring the contents of the FIR and submitted that on the basis of the FIR, the present case was registered. He further submitted that the respondent accused persons were produced under arrest before the Learned Judicial Magistrate, First Class, Court No.4, West Tripura, Agartala on 09.06.2025 and on that day, a bail application was moved on their behalf by their engaged Learned defence counsel and at the time of passing order Learned JM, First Class made the following observation :

"Upon hearing both sides and considering the materials on record, it appears that the allegations pertain to an assault with deadly weapons resulting in grievous injuries to multiple person. The accused persons are alleged to have actively participated in the said incident. The material available on record substantiate the occurrence of injuries. The incident is not only serious in nature but also carries potential implications for public order and communal harmony.

This Court is mindful of the fact that section 109 of the BNS, being punishable with life imprisonment, renders the accused persons ineligible for bail by a Magistrate under section 480 of the BNSS, except in circumstances where the proviso to the said section are attracted. In the present case, no such mitigating factors or circumstances exist that would warrant application of the proviso. The investigation is at an early stage and recovery of materials is still underway.

In addition, the risk of tampering with evidence, influencing witnesses, and the potential for recurrence of violence in the prevailing atmosphere of communal sensitivity cannot be ignored.

Considering the overall facts and circumstances, I find no merit in the present bail application.

Hence, the bail prayer on behalf of the accused persons Khairul Islam and Najrul Miah stands rejected."

Thereafter, the respondent accused persons moved one bail application to the Court of Learned Additional Sessions Judge, Court No.2, West Tripura, Agartala which was numbered as

B.A.No.04/25 and by order dated 11.07.2025 Learned Additional Sessions Judge granted bail to the respondent accused persons and challenging that order, the prosecution has moved this application before this Court for cancellation of bail granted to the respondent accused persons.

[04] Learned P.P. further drawn the attention of the Court that at the time of passing of the order Learned Additional Sessions Judge in page-4 and 5 came to the observation that the allegation against the accused persons was serious in nature. However, considering the period of incarceration of the accused persons in judicial custody, he finally without appreciating the materials on record granted bail to the respondent accused persons. For the sake of brevity, the relevant part of the order of Learned Addl. Sessions Judge is narrated herein below :

"I have carefully gone through the CD and LCR of both the cases, having considered the rival submission, this court must balance liberty of the individual against the interest of justice and societal security. It is undisputed that the allegation is serious. However, this court also taken into account the period of incarceration already undergone by the accused persons which exceeds one month. Purpose of pretrial detention is not punitive. While investigation on going, the case diary reveals that the statement of primary witnesses have recorded and the injury report have been collected. The apprehension of the individual detention, while a valid concern, cannot be a sole ground for indefinite detention specifically if no fresh incident has been reported against the accused persons since the date of alleged offence. State has mechanism to maintain law and order and also to protect witnesses from apprehensive threats.

Considering the totality of the circumstances including of detention already suffered and the principle that bail is the rule and jail is the exception, this court is of the opinion that the accused persons continue detention is not warranted. The legitimate concern of the prosecution can be addressed by imposing stringent condition. Accordingly bail application is allowed."

[05] Learned P.P. further submitted that the allegation of the prosecution against the respondent accused persons does not warrant scope for granting bail yet the Learned Addl. Sessions Judge without appreciating the material evidence so far collected

by IO during investigation and also the injury report of the victim granted bail to the accused simply on the ground that they were in custody for a considerable period of time for which the interference of the Court is required. He also drawn the attention of the Court referring Section 116(g) of BNS, 2023 and drawn the attention of the Court that where there was evidence of grievous hurt as required under Section 116(g) of BNS, 2023 and in addition that there were incriminating materials available in the CD showing their implications with the alleged offence punishable under Section 61/ 109/148/118(2)/3(5)/196/192 of BNS but the Learned Addl. Sessions Judge at the time of consideration of the bail application did not consider the same and came to the observation that since the statement of the primary witnesses have been recorded, injury report have been collected and no fresh incident reported against the accused. So, he granted bail to the respondent accused persons which show total non-application of mind of the Learned Court below. In support of his contention, Learned P.P. also drawn the attention of the Court referring one citation of the Hon'ble Supreme Court of India in **State of Karnataka versus Sri Darshan Etc.** reported in **2025 SCC OnLine SC 1702** wherein in para Nos. 18.1, 18.3, 18.4, 18.5, 18.11, 18.13, 20.5.1, 20.5.2, 20.5.4, 20.5.6, 22.2.1, 22.4, 22.4.1, 22.4.3, 22.4.5, 23.1 made the following observations :

“(A) Annulment of bail orders

18.1. This refers to the appellate or revisional power to set aside a bail order that is perverse, unjustified, or passed in violation of settled legal principles. It is concerned with defects existing at the time the bail was granted, without reference to subsequent conduct.

18.3. In Puran v. Rambilas (2001) 6 SCC 338, it was held that a bail order can be set aside even in the absence of post-bail misconduct if it is found to be unjustified, illegal, or perverse.

18.4. Similarly, in Dr. Narendra K. Amin v. State of Gujarat (2008) 6 Scale 415, a three-Judge Bench held that consideration of irrelevant materials renders the bail order vulnerable and liable to be set aside.

18.5. In Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496, this Court held that where the High Court grants bail mechanically and without application of mind to material factors such as the gravity of the offence or antecedents of the accused, such an order must be set aside.

18.11. In Dolat Ram v. State of Haryana (supra), this Court delineated broad, though not exhaustive, grounds justifying cancellation of bail, including:

- **Interference or attempt to interfere with the due course of justice;**
- **Evasion of justice;**
- **Abuse of the concession of bail;**
- **Likelihood of the accused fleeing from justice.**

18.13. In Mahipal v. Rajesh Kumar (supra), Justice D.Y. Chandrachud explained:

“An appellate court is empowered to set aside a bail order if it is found to be based on a misapplication of legal principles or where relevant considerations have been ignored. On the other hand, cancellation of bail typically arises from post-bail conduct or supervening circumstances.”

20.5.1. The fact that the accused were in custody for more than 140 days, or exhibited good conduct post-release, does not ipso facto render the order of bail sustainable, if it suffers from non-consideration of material factors at the stage of grant.

20.5.2. In State through CBI v. Amaramani Tripathi, 2005 (8) SCC 21, this Court reaffirmed that “...the mere fact that the accused has undergone certain period of incarceration... by itself would not entitle the accused to being enlarged on bail... when the gravity of the offence alleged is severe...”

20.5.4. In Ash Mohammad v. Shiv Raj Singh @ Lalla Bahu, (2012) 9 SCC 446, the Court reiterated that the period of custody, while relevant, must be weighted against the totality of circumstances, including the nature of the crime and criminal antecedents. It was held that:

“31. Be it noted, a stage has come that in certain States abduction and kidnapping have been regarded as heroism. A particular crime changes its colour with efflux of time. The concept of crime in the contextual sense of kidnapping has really undergone a sea change and has really shattered the spine of the orderly society. It is almost nauseating to read almost every day about the criminal activities relating

to kidnapping and particularly by people who call themselves experts in the said nature of crime.

32. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction of liberty of the accused.

33. In the present context the period of custody of seven months, in our considered opinion, melts into insignificance. We repeat at the cost of repetition that granting of bail is a matter of discretion for the High Court and this Court is slow to interfere with such orders. But regard being had to the antecedents of the accused which is also a factor to be taken into consideration as per the pronouncements of this Court and the nature of the crime committed and the confinement of the victim for eight days, we are disposed to interfere with the order impugned.

34. We may note with profit that it is not an appeal for cancellation of bail as cancellation is not sought because of supervening circumstances. The present one is basically an appeal challenging grant of bail where the High Court has failed to take into consideration the relevant material factors which make the order perverse."

Accordingly, the bail order was set aside and the accused was directed to surrender.

20.5.6. In conclusion, while post-bail good conduct or the period of incarceration may be relevant considerations at the stage of continuing bail, they cannot cure the fundamental defects in an order granting bail which is otherwise perverse, legally untenable, or passed without due consideration of material factors such as the gravity of the offence, prima facie involvement, and the likelihood of influencing witnesses or tampering with evidence. An unsustainable bail order does not become valid with the mere passage of time or the subsequent behaviour of the accused. Judicial scrutiny must focus on whether the discretion to grant bail was exercised judiciously, and in accordance with established principles, at the time of the grant, and not mechanically or on technicalities. Therefore, the order of the High Court granting bail to the respondents/accused, deserves to be set aside.

22.2.1. In *Puran v. Rambilas*, (2001) 6 SCC 338, this Court categorically held that "Cancellation of bail is

permissible where the order granting bail was perverse, or if the accused tampers with evidence or attempts to influence witnesses."

22.4. An order that overlooks material evidence or proceeds on an erroneous premise is perverse, and such perversity forms a valid ground for cancellation or setting aside of bail.

22.4.1. In Mahipal v. Rajesh Kumar (supra), this Court laid down that "where the order granting bail is founded on irrelevant considerations, or non-consideration of material facts, the same is rendered perverse and is liable to be set aside." Similarly, in State of U.P. v. Amarmani Tripathi (supra) the Court held that "bail orders must be founded on a careful and judicious application of mind to the facts of the case and the seriousness of the offence. Non-consideration of relevant material renders the order vulnerable to challenge."

22.4.3. In Neeru Yadav v. State of U.P. (supra), this Court reversed the grant of bail observing that "Where the High Court ignores vital circumstances and material facts, the order becomes indefensible".

22.4.5. In offences punishable with life imprisonment or death, the bail court must be especially cautious. In Ash Mohammed v. Shiv Raj Singh (supra), this Court emphasized that in serious offences, "the gravity of the offence and its impact on society must weigh heavily with the court, and such cases must be considered with greater care and circumspection". However, in the present case, the High Court's order fails to reflect any such higher scrutiny or cautious approach, despite the seriousness of the charge and the wider societal impact of the case.

23.1. In State of Maharashtra v. Dhanendra Shriram Bhurle, (2009) 11 SCC 541, it was observed that "grant of bail in serious offences involving public confidence must be handled with great caution, especially where the accused enjoys influence".

Referring the aforesaid case, Learned P.P. drawn the attention of the Court that by the said order Hon'ble the Apex Court cancelled the bail granted to the respondent accused persons.

Here in the case at hand from the initial order passed by Learned Judicial Magistrate, First Class and thereafter the Learned Addl. Sessions Judge it appears that both the Courts came to the observation that there were serious allegations against the respondent accused persons but only considering the period of detention of the accused persons in custody without

considering the incriminating evidence revealed against the respondent accused persons mechanically granted bail to them. As such, the interference of the Court is required. So, Learned P.P. ultimately prayed for cancellation of the order dated 11.07.2025 delivered by Learned Addl. Sessions Judge, Court No.2, Agartala, West Tripura in the aforementioned case.

He further relied upon another citation of the Hon'ble Supreme Court of India in **Shabeen Ahmad vs. State of Uttar Pradesh & Anr.**, reported in **(2025) 4 SCC 172** wherein in para Nos.27 and 28 Hon'ble the Apex Court observed as under :

"18. ***

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In *P. v. State of M.P.* [*P. v. State of M.P.*, (2022) 15 SCC 211] decided by a three-Judge Bench of this Court [authored by one of us (Hima Kohli, J.)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1)CrPC in the following words : (SCC p. 224, para 24)

'24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [*Dolat Ram v. State of Haryana*, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] . To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court.'

Considerations for setting aside bail orders

28. The considerations that weigh with the appellate court for setting aside the bail order on an application

being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.”

Referring the same, he submitted that although it is the settled position of law that bail once granted ought not to be cancelled in a mechanical manner but if the order is unreasoned or perverse, which is always open for interference by the superior Court or unjustified.

Here in the given case, according to Learned P.P. the Learned Addl. Sessions Judge in the order opined that the allegation was serious in nature but on the other hand simply on the ground of incarceration of the respondent accused persons in custody granted bail to the accused persons without considering the materials on record as well as the injury report of the victim for which the interference of the Court is required.

He then referred another citation of the Hon’ble Supreme Court of India in **Sumitha Pradeep vs. Arun Kumar C.K. & Anr.**, reported in **(2022) 17 SCC 391**, wherein in para No.12, Hon’ble the Apex Court observed as under:

“12. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like Poocho and, therefore, the order passed by the High Court

granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail."

Referring the same, he has drawn the attention of the Court that even if custodial interrogation is also not required in that case also there is no scope to grant bail to the accused where there was incriminating materials on record against the respondent accused persons.

Learned P.P. thereafter referred another citation of the Hon'ble Supreme Court of India in **Jage Ram & Ors. vs. State of Haryana** reported in **(2015) 11 SCC 366**, wherein in para No.12, Hon'ble the Apex Court observed as under:

"12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of

the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

Referring the same, he submitted that in consideration of bail application in a case of erstwhile Section 307 of IPC now Section 109 of BNS the intention is to be gathered from circumstances like the nature of weapon used, words used by the accused at the time of incident, motive of the accused, parts of the body where the injury was caused are to be taken into consideration.

Here in the case at hand on the bottom of the FIR the respondent accused at the time of alleged commission of offence loudly uttered “sobdire maira la jabai kar” which indicates the intention of the accused persons to commit the offence but the Learned Court below did not consider the same and urged for taking note of the said observation of the Hon’ble Apex Court in this regard.

Further reference was made by Learned P.P. in another case of the Hon’ble Supreme Court of India In **Ajwar vs. Waseem & Anr.** along with other connected matters reported in **(2024) 10 SCC 768**, wherein in para Nos.26 and 27, Hon’ble the Apex Court observed as under:

“Relevant parameters for granting bail

26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on

bail. [Refer : Chaman Lal v. State of U.P. [Chaman Lal v. State of U.P., (2004) 7 SCC 525 : 2004 SCC (Cri) 1974] ; Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] ; Masroor v. State of U.P. [Masroor v. State of U.P., (2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] ; Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] ; Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] ; Anil Kumar Yadav v. State (NCT of Delhi) [Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129 : (2018) 3 SCC (Cri) 425] ; Mahipal v. Rajesh Kumar [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] .]

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In P v. State of M.P. [P v. State of M.P., (2022) 15 SCC 211] decided by a three-Judge Bench of this Court [authored by one of us (Hima Kohli, J.)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1)CrPC in the following words : (SCC p. 224, para 24)

"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] . To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."

Referring the same, Learned P.P. further submitted that although it is the settled position of law that bail once granted ought not to be cancelled in a mechanical manner but if it is found that such order is found to be illegal or perverse, in that case, such order is susceptible in scrutiny and interference by the appellate Court. He further submitted that since on bare perusal of

the order of the Learned Addl. Sessions Judge it appears that Learned Addl. Sessions Judge at the time of consideration of the bail application although admitted that the allegation was serious in nature but without appreciating the materials collected by IO during investigation against the accused persons granted bail which was perverse and for that the interference of the Court is required.

He also referred another citation of the Hon'ble Supreme Court of India in **State of Madhya Pradesh vs. Harjeet Singh & Anr.**, reported in **(2019) 20 SCC 524**, wherein in para Nos.5.6.1, 5.6.3 and 5.6.4, Hon'ble the Apex Court observed as under:

"5.6.1. If a person causes hurt with the intention or knowledge that he may cause death, it would attract Section 307.

5.6.3. If the assailant acts with the intention or knowledge that such action might cause death, and hurt is caused, then the provisions of Section 307 IPC would be applicable. There is no requirement for the injury to be on a "vital part" of the body, merely causing "hurt" is sufficient to attract Section 307 IPC. [State of M.P. v. Mohan, (2013) 14 SCC 116 : (2014) 4 SCC (Cri) 119]

5.6.4. This Court in Jage Ram v. State of Haryana [Jage Ram v. State of Haryana, (2015) 11 SCC 366 : (2015) 4 SCC (Cri) 425] held that: (SCC p. 370, para 12)

"12. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the

weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

(emphasis supplied)

Referring the same he submitted that since in this case there are sufficient materials showing implication of the respondent accused persons with the alleged offence punishable under Section erstwhile Section 307 of IPC now Section 109 of BNS and here in the case at hand there was sufficient materials for involvement of the respondent accused persons with the offence punishable under Section 109 of BNS but the Learned Addl. Sessions Judge without considering the materials on record granted bail to them and in view of the principle of law laid down by the Hon'ble Apex Court in the aforementioned case and the conduct of the accused, it is a fit case for cancellation of bail granted to the respondent accused persons.

[06] Finally, Learned P.P. submitted that although in the order some citations were referred by the State prosecution but those principles of law laid down were not discussed by the Learned Addl. Sessions Judge at the time of passing of order, even according to the said principles of law sometimes detention period is also not required to be considered in granting bail but here in the case at hand the Learned Addl. Sessions Judge without application of proper mind and without considering the principles of law laid down by the Hon'ble Apex Court simply on the ground of detention of the accused persons in custody for a period of more than thirty days granted bail to them for which the interference of the Court is required and he urged for setting aside

the order passed by Learned Addl. Sessions Judge. He further drawn the attention of the Court referring the GD No.28 dated 13.07.2025 of East Agartala P.S. and statement of one of the witness and submitted that after release on bail, the accused persons threatened the witnesses of the prosecution and also threatened to kill them if they give any statement against them and accordingly, those witnesses reported the matter to O/C of the concerned P.S. and the same was entered in G.D.E. which needs to be taken into consideration by this Court at the time of passing order.

[07] On the other hand, Learned Senior Counsel Mr. P. K. Biswas assisted by Mr. H. K. Bhowmik, Learned Counsel appearing on behalf of the respondent-accused persons strongly countered the submission made by Learned P.P. representing the prosecution and submitted that the citations referred by Learned P.P. appearing on behalf of the State-respondent are misleading which cannot be applied in this case because the facts and circumstances of those cases are totally different from the facts of the present case and in this case Learned Addl. Sessions Judge after perusal of the case diary and the materials on record and also after considering the case and the counter-case with reasoned order granted bail to the respondent-accused persons which cannot be interfered by this Court at this stage. He further drawn the attention of the Court referring the contents of the FIR that in the first page of the FIR the informant who had written the FIR only indicated the name of one Sahajahan Islam and 10/12 other persons but in the second page he implicated the name of the

respondent-accused persons with a malafide intention and furthermore he was not the inhabitant of that locality where the respondent-accused used to reside. He further drawn the attention of the Court that this is purely a political case and on the alleged date and time the informant party and others hand ransacked the house of the respondent-accused persons even they did not spare the ladies who were present to the residence and that time two political persons of the Congress Party appeared therein to whom police rescued and after that, the respondent-accused persons were brought to police station by the police personnel when they were illegally detained by the police. Even on that day, their counter FIR was not accepted by the Police which was laid by one Rabiya Begam and furthermore Learned Senior Counsel drawn the attention of the Court that in the FIR it was mentioned that based on a facebook news the incident took place but now-a-days once the facebook news is uploaded it becomes viral within a very short span of time and even if it was presumed that the same was uploaded by one of the respondent-accused there was no scope on his part to delete the same from the system but the informant party not only caused hurt to the respondent accused persons and they also manhandled the women members of the family and furthermore till today, there was no any adverse report from the side of the police regarding violation of the conditions of bail granted to the respondent accused-persons and the prosecution could not establish any supervening circumstances to cancel the bail granted to the respondent-accused persons. It was further submitted that if there was any evidence of any violation of order

of bail in that case without registering any specific case simply on the basis of GD entry beyond the knowledge of the respondent-accused there was no scope to take any adverse inference against the respondent-accused persons.

[08] Learned Senior Counsel further drawn the attention of the Court to strengthen the case under Section-192 and 196 of BNS were added by the Police just to harass the accused persons in absence of any such evidence on record. Learned Senior Counsel thereafter drawn the attention of the Court referring the relevant part of the order dated 11.07.2025 delivered by Learned Addl. Sessions Judge wherein it was clearly observed by the Learned Trial Court that bail is the rule and jail is the exception and the continued detention of the accused persons were not required and the Learned Court of Addl. Sessions Judge considering the case diary and the statement of witnesses, injury report of the victim came to the observation that continued detention of the respondent accused persons were not required as no fresh incident reported against the accused persons since the date of alleged offence. So, there was no illegality and perversity in the order passed by Learned Addl. Sessions Judge and urged for dismissal of the bail application.

[09] In support of his contention, Learned senior counsel referred one citation of the Hon'ble Supreme Court of India in **Deepak Yadav vs. State of Uttar Pradesh & Anr.**, reported in **(2022) 8 SCC 559**, wherein in para Nos.32 and 33, Hon'ble the Apex Court observed as under:

32. This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted). A two-Judge Bench of this Court in *Dolat Ram And Others Vs. State of Haryana : (1995) 1 SCC 349* laid down the grounds for cancellation of bail which are :-

(i) interference or attempt to interfere with the due course of administration of Justice

(ii) evasion or attempt to evade the due course of justice

(iii) abuse of the concession granted to the accused in any manner

(iv) Possibility of accused absconding

(v) Likelihood of/actual misuse of bail

(vi) Likelihood of the accused tampering with the evidence or threatening witnesses.

33. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:

33.1. Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

33.2. Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the

very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.”

Referring the same Learned senior counsel drawn the attention of the Court that bail once granted should not be cancelled in a mechanical manner without considering any supervening circumstances. But here in the case at hand prosecution till today could not prove any supervening circumstances for interference to cancel the order of bail granted to the accused.

In **Satender Kumar Antil vs. Central Bureau of Investigation & Anr.**, reported in **(2022) 10 SCC 51**, wherein in para Nos.12, and 13, Hon’ble the Apex Court observed as under:

“Bail is the rule

12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This Court in Nikesh Tarachand Shah v. Union of India [Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] , held that : (SCC pp. 22-23 & 27, paras 19 & 24)

“19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the purpose of granting bail is set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, 1923

SCC OnLine Cal 318 : AIR 1924 Cal 476] , AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the "Meerut Conspiracy cases" observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356] , AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)

"1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right."

29. In Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)

"29. ... There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."

30. In American Jurisprudence (2nd Edn., Vol. 8, p. 806, para 39), it is stated:

"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.'

24. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post

**Maneka Gandhi v. Union of India
[Maneka Gandhi v. Union of India,
(1978) 1 SCC 248] .”**

13. Further this Court in Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] , has observed that : (SCC p. 52, paras 21-23)

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

Referring the same, Learned senior counsel drawn the attention of the Court that here in the case at hand the matter is pending before the Court for cancellation of bail not by granting of fresh bail and in a case of cancellation of bail certain factors are to be taken into consideration but here in the case at hand the prosecution could not establish any ground or supervening circumstances to reject the privilege of bail granted to the accused persons and urged for dismissal of the bail application filed by the prosecution.

Learned senior counsel for the accused referred another citation of the Hon'ble Supreme Court of India in **Bhagirathsinh s/o Mahipat Singh Judeja vs. State of Gujarat**, reported in **(1984) 1 SCC 284**, wherein in para Nos.3 and 5 Hon'ble the Apex Court observed as under:

"3. It is alleged that the appellant gave blows with a knife to one Popatlal Sorathia, who had come to visit an indoor patient Navalsinh Bhatti on August 17, 1983 around 9.45 a.m. Appellant was accosted by the policemen on duty. An offence under Section 307 IPC was registered against him and the appellant was taken into custody and was subsequently remanded to judicial custody. An application for releasing him on bail was made on August 22, 1983 to the Chief Judicial Magistrate, Rajkot. The Chief Judicial Magistrate, Rajkot was pleased to dismiss the same by his order dated August 29, 1983.

5. It appears that the State of Gujarat filed Miscellaneous Criminal Application No. 1724 of 1983 in the High Court of Gujarat seeking cancellation of the order granting bail to the appellant. A learned Single Judge of the High Court held that once a prima facie case is established, the learned Sessions Judge ought to have taken into consideration the nature and gravity of the circumstances in which the offence is committed. The charge against the appellant is that he has committed an offence punishable under Section 307, IPC and Section 135 of the Bombay Police Act and even on the date of hearing of this appeal before us on November 18, 1983, the Court was informed that the victim is alive and at present there is no danger to his life. Nearly 3 months have rolled by from the date of the offence. We fail to understand what the

learned Judge of the High Court desires to convey when he says that once a prima facie case is established, it is necessary for the court to examine the nature and gravity of the circumstances in which the offence was committed. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence. We would have certainly overlooked this aspect of the matter if the approach of the learned Judge was otherwise one which would commend to us. It however appears that the learned Judge was impressed by some of the most irrelevant considerations which prima facie emerge from the following observations of the learned Judge which permeates his whole order running into about 13 pages.

6. Says the learned Judge:

"The learned Judge ought to have seen the fact that the helpless victim had gone to the hospital for pre-operation check-up. He was a leading social and political worker. He was an active worker and Secretary of Gundagiri Nivaran Samiti which had raised a campaign against the atrocities allegedly having been committed by the Rajputs of Girasiya community. Admittedly the respondent is Girasiya and the complainant who was an active worker and Secretary of Gundagiri Nivaran Samiti had become a victim at the hands of the respondent. The learned Judge ought to have taken into consideration the material fact that the incident had taken place in the premises of the hospital which may terrorise a number of sick persons who might be getting treatment in the hospital."

At another place, the learned Judge has observed that the learned Sessions Judge has ignored the fact that a social and political worker was attacked in the hospital premises with a knife having 9" blade and as many as 11 injuries were caused to a helpless victim."

Referring the same he submitted that in view of the principle of law laid down by the Hon'ble Apex Court in the aforenoted case here in the case at hand there is no materials on record before the Court from the side of the prosecution to cancel the bail granted to the accused-persons.

Learned Senior Counsel again referred another citation of the Hon'ble Supreme Court of India in **Ms. X vs. State of**

Telangana & Anr., reported in **(2018) 16 SCC 511**, wherein in para No.17 Hon'ble the Apex Court observed as under:

"17. The accused had the benefit of an order granting him anticipatory bail. The grant of anticipatory bail was cancelled principally on the ground that he had not disclosed the pendency of a prosecution against him in the 2G Spectrum case. The Court has been informed during the course of the hearing that the said prosecution has ended in an acquittal. Regular bail was granted by the High Court on 17-11-2017 [Karim Morani v. State of Telangana, 2017 SCC OnLine Hyd 533] in the present case. The second FIR which was lodged on 22-11-2017 is not, in our view, a supervening circumstance of such a nature as would warrant the cancellation of the bail which was granted by the High Court. The learned counsel appearing on behalf of the accused has submitted that the lodging of the second FIR, four days after the order of bail is merely an attempt to bolster a case based on a supervening event and that it suffers from vagueness and a complete absence of details. We are not inclined to make any further observations and leave the matter there. Above all, the Court must bear in mind that it is a settled principle of law that bail once granted should not be cancelled unless a cogent case, based on a supervening event has been made out. We find that to be absent in the present case."

Referring the same he submitted that once the bail is granted there is no scope to cancel it and here in the case at hand Learned Additional Sessions Judge considering the materials on record allowed bail to the accused which is not suffering from any sort of infirmity and in view of the present circumstances at this stage there is no scope to cancel the bail granted to the respondent accused-persons.

Finally, Learned senior counsel referred another citation In **Kashmira Singh vs. Duman Singh**, reported in **(1996) 4 SCC 693**, wherein in para No.10 Hon'ble the Apex Court observed as under:

"10. Indisputably, there was a fight between two groups. Which party had launched the attack would be a matter of evidence but for the purpose of this appeal, we assume that the accused's side

was the aggressor. The fact, however, remains that there was casualty on both sides since both sides were armed. Whether a cross-complaint was filed or not does not alter this factual reality. The possibility of the respondent's side being the aggressor, or there being a free fight cannot be overlooked altogether. Non-filing of a cross-complaint may be a relevant factor, but that there were injuries on both sides has to be accepted. This fact was known to the court when it granted bail. Therefore, in our view, this ground is not strong enough for cancellation of bail."

Referring the same he submitted that since there is case and counter case amongst the rival parties and considering the materials on record Learned Additional Sessions Judge granted bail to the accused persons. So, at this stage considering the materials on record there is no scope to interfere with the order delivered by Learned Additional Sessions Judge on 11.07.2025 and finally Learned Senior Counsel submitted that since the citations referred by Learned P.P. representing the prosecution does not covers the present case of the prosecution and as such, he urged for dismissal of the application for cancellation of bail filed by the prosecution.

[10] To counter the reply Learned P.P. further submitted that on bare perusal of the FIR nowhere it will be found that the complainant was/is a political person and as submitted by Learned Senior Counsel that the alleged counter case was filed after a considerable period so the submission of Learned Senior Counsel cannot be considered.

[11] I have heard detailed submission of both the sides at length and perused the order dated 11.07.2025 passed by Learned Addl. Sessions Judge, Court No.2, West Tripura, Agartala in connection with BA No.104/2025. Also, I have also gone

through the citations referred by Learned Counsel of the rival parties.

[12] In the case at hand, the prosecution was set into motion on the basis of an FIR laid by one Nagadhiraj Datta of Shibnagar to O/C, East Agartala Police Station alleging inter alia that on 08.06.2025 one Md. Sahajahan Islam posted a video on his facebook profile vide URL No.<http://www.facebook.com/share/V/150dzZjN4T/>. He saw the said video on his facebook profile and in the said video, the said accused made derogatory statements against the Chief Minister of the State and questioned the Government of India as to why Manik Saha was appointed as the Chief Minister of the State and for the said reason the accused declared war against State Government and Central Government and tried to instigate religious and communal dispute and made provocative speech. After that in the evening at about 08.00 p.m. he along with 4/5 persons found accused Sahajahan Islam in front of his house and on finding him he requested him to delete the said post that time the accused along with his father and brother and other miscreants conjointly attacked them with dao and lathi with intention to kill them resulting which Raktim Sarkar, Kuljit Debnath and Subhradeep Gupta sustained bleeding injuries and they have immediately taken to IGM Hospital for treatment from where they were referred to GBP Hospital. It was further mentioned in the FIR that the accused persons and his associates in order to kill them uttered loudly 'sobdire mariya la, jabai kor' (kill everyone slaughter them). Hence he laid the FIR.

[13] On the basis of the aforesaid FIR, the present case was registered and in course of investigation, the accused respondent persons were arrested and they were taken into custody and they were produced before the Court under arrest. Initially, they were produced before the Court of Learned J.M. First Class Court No.4, Agartala, West Tripura and the Learned J.M. First Class by order dated 09.06.2025 was pleased to reject their bail application. I have also perused the said order as mentioned above delivered by Learned J.M. First Class. Thereafter, the respondent-accused persons moved one bail application under Section 483 of BNSS, 2023 before the Court of Learned Addl. Sessions Judge, Court No.2, West Tripura, Agartala and the Learned Addl. Sessions Judge by order dated 11.07.2025 was pleased to grant bail to the respondent-accused persons which is challenged before this Court by the prosecution.

[14] In course of hearing both the rival parties have placed their arguments and counter-arguments to substantiate their cases. The prosecution to substantiate the case also produced the Case Diary before this Court. This present case has been registered under Section 61/109/148/118(2)/3(5) of BNS with added Section 192/196 of BNS, 2023. For the sake of convenience I would like to refer herein below all the relevant provisions of the BNS on the basis of which this case has been registered.

“Section-61 deals with criminal conspiracy. Section-109 of BNS deals with attempt to murder. Section-148 relates to conspiracy to commit offences punishable by Section-147. Section-118(2) relates to punishment for grievous hurt. Section-3(5) of BNS relates to criminal intention. Section-192 relates to wantonly giving provocation with intent to cause riot-if rioting be committed; if not committed and Section-196

deals with promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.”

[15] The investigation of the case is in progress. The I.O. by this time has collected the injury report of the victim and also recorded the statement of some of the material witnesses of the prosecution who are/were conversant with the facts and circumstances of the case including the alleged victims of this case who sustained injury due to causing of hurt by the alleged accused persons.

[16] I have also seen the medical injury report of one of the victim Subhradeep Gupta who sustained grievous injury which attracts the provision of Section 116(g) of BNS, 2023. Apart from the statement of the victims I have also seen the statement of other witnesses recorded by I/O in course of investigation. The I/O in course of investigation seized one knife made of iron and also one iron made stick and iron rod, the alleged weapon of offence which were used at the time of commission of offence by the respondent accused-persons and others.

From the injury report of the victims as well as the statements of witnesses so far recorded by I/O upto this stage of investigation, it appears that there are/were sufficient materials against the respondent accused and others showing their implication with the alleged offence.

[17] I have also gone through the statement of witnesses who were threatened by the accused persons after their release on bail as per order of the Court, on the basis of which GD Entry was made by O/C of the concerned PS. From the statements of

witnesses so far recorded by I/O up to this stage of investigation apart from evidences punishable under Section 69/109/148/118(2) of BNS there are also evidences against the accused-persons including the principle accused showing his implication with the offence punishable under Section 192/196 of BNS. Since the investigation of the case is in progress so at this stage, there is no scope to give any observation regarding innocence or regarding guilt of any of the accused persons.

[18] From the order dated 11.07.2025 passed by Learned Additional Sessions Judge, it appears that at the time of granting bail Learned Additional Sessions Judge, West Tripura, Agartala also considered the materials on record which were collected by I/O in course of investigation of the case and accordingly in page-4 of the order, Learned Additional Sessions Judge came to the observation that the allegation was serious in nature. But only considering the period of incarceration of the accused persons in custody, Learned Additional Sessions Judge granted bail to the respondent accused persons without considering/ignoring the materials on record and also the gravity of the offence which appears to be non application of proper mind.

[19] I have also perused the citations referred by both the sides. It is the settled position of law that bail once granted cannot be cancelled in a mechanical manner. But at the same time it is also the settled position of law that if the order impugned appears to be perverse, unjustified not supported by cogent materials on record that can be interfered by the upper forum. Here in the case at hand, injury of one of the victim was grievous in nature for

which under Section 118(2) of BNS there is scope for imposing punishment upto 10 years and also under Section 109 of BNS, more grievous punishment is provided.

[20] Learned Court below at the time of granting bail came to the observation that since the statement of primary witnesses have been recorded and injury report is collected, so there was no scope for indefinite detention of the accused persons in custody. But once the Court forms an opinion that the allegation is serious in nature, in that case, how the Learned Additional Sessions Judge came to the observation that further detention was not required. Even it appears that the citations referred by the parties were not discussed by Learned Court below at the time of passing of order which in the considered opinion of this Court was not proper because once the citations are referred by the Learned Counsels then it casts a duty upon the Court either to accept or to differ with the same but some opinion is required to be reflected in the order sheet so that the concerned Learned Counsels can understand that their citations have been taken care of by the concerned Court at the time of delivery of judgment/order. Here if the charges of the prosecution are proved then there is scope for imposing punishment upto life also. Prosecution before this Court has challenged the legality and impropriety of the order delivered by Learned Addl. Sessions Judge, West Tripura, Agartala. To substantiate the allegation, Learned Counsel of both the rival parties have placed their elaborate arguments.

[21] I have also gone through the citations referred by Learned Senior Counsel for the respondent-accused persons. As

already stated, it is settled position of law that bail is rule jail is exception and mechanically there is no scope to cancel the bail granted to a person but at the same time it is also true that if there is any perversity in the order of the Court below whose order has been challenged, in that case, the Learned Appellate Court or the upper forum cannot keep their eyes closed and moreover at this stage beyond the Case Diary there is very least scope to consider the other imputes as referred by Learned senior counsel.

However, if it is found that the accused persons have good prima facie case and they have got sufficient materials in support of their defence that can only be considered in course of trial by any Court. Even the accused may substantiate their defence by adducing defence witness during trial not during the stage of investigation.

It is also the settled position of law that the prosecution is to prove its case beyond reasonable doubt but that reasonableness can only be considered after conclusion of trial of a case. Here we are concerned with the bail only. Learned Addl. Sessions Judge, West Tripura only considering the period of detention in custody granted bail. But at the time of passing order of bail Learned Addl. Sessions Judge failed to appreciate the materials on record and the evidence so far collected by I/O upto this stage of investigation including the injury report of the victim. Because as already stated, Learned Court below initially came to the observation that the allegation was serious but later on,

simply on the ground of detention/incarceration granted bail which shows non-application of proper mind by the Learned Court below.

[22] Learned P.P. in course of his argument referred few citations in support of the case of the prosecution. I have meticulously perused the citations referred by the prosecution. It is trite that bail once granted should not be cancelled mechanically but at the same time, as already stated, if the order is perverse and suffers from infirmity that can be intervened by the Superior forum.

[23] Here in this case after perusal of the entire Case Diary and the materials on record it appears that all the victims of this case have sustained more or less injury to their persons due to causing of attack by the respondent-accused and others. The injury of one of the victim was grievous in nature so the prima facie involvement of the respondent-accused persons punishable under Section 109/118(2) cannot be ruled out. The IO also has seized the alleged weapon of offence by this time which was used at the time of alleged occurrence of offence. It is also on record that after release on bail, the accused persons threatened the witnesses of the prosecution not to depose against them before the Court failing which their life would be in danger and their families would suffer bad consequences.

[24] So, after hearing both the sides and also after going through the citations referred by both the parties and the order dated 11.07.2025 delivered by Learned Addl. Sessions Judge, Court No.2, West Tripura, Agartala in connection with B.A. No.104 of 2025 and considering the materials in CD, it appears that the

said order suffers from perversity for non-application of proper mind for which the interference of the Court is required and accordingly, the order dated 11.07.2025 delivered by Learned Addl. Sessions Judge, Court No.2, West Tripura, Agartala in connection with B.A. No.104 of 2025 is hereby stands cancelled and set aside.

The accused persons are to surrender before the Court of Learned Jurisdictional Magistrate, West Tripura, Agartala on or before 24.09.2025.

Send down the record of Learned Court below along with a copy of this order. Also, send a copy of this order to the Learned Addl. Sessions Judge, Court No.2, West Tripura, Agartala.

Return back the Case Diary to IO through Learned P.P. along with a copy of this order.

JUDGE

MOUMITA
A DATTA

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MOUMITA DATTA
Date: 2025.09.17
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