

**HIGH COURT OF TRIPURA
AGARTALA
AB No.53 of 2025**

Sri Sahid Debbarma,
Son of Bishu Debbarma,
Resident of Harinath Sarkar Para,
Village: Paschim Jirania Khala,
P.S. Radhapur, P.O. Birendra Nagar,
Paschim Jirania Khala, PIN:799 045,
District: West Tripura

---Accused-Petitioner

-Vs-

The State of Tripura

---Respondent

For Applicant(s)	:	Mr. Subrata Sarkar, Sr. Adv. Mr. Kabrabam Dhirendra Singha, Adv. Ms. Moulika Choudhury, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

08/08/2025

This pre-arrest bail application is filed for granting bail to the accused-applicant in connection with Radhapur P.S. Case No.008 of 2025 registered under Section 118(2), 109, 351(3), 3(5) of BNS, 2023 and also under Section 27(2) of the Arms Act, 1959. As ordered yesterday the I.O. has submitted report today before this Court and Learned P.P. also has produced the Case Diary. By this time we have also received the record from the Learned Trial Court.

Heard Learned Senior Counsel Mr. S. Sarkar assisted by Mr. K. D. Singha, Learned Counsel and Ms. M. Choudhury, Learned Counsel appearing for the applicant and also heard Learned P.P. Mr. Raju Datta appearing for the State-respondent.

At the time of hearing Learned Senior Counsel Mr. S. Sarkar appearing on behalf of the applicant has drawn the attention of

the Court referring the contents of the FIR that although the case is registered under the aforesaid sections but on bare perusal of the same it will be clear that there is no material to invoke Section 27(2) of the Arms Act in this case. He also drawn the attention of the Court referring the definition of 'Prohibited arms' as contained in the Arms Act. Further referring Section 118(2) and 109 of BNS, 2023 Learned Senior Counsel drawn the attention of this Court that considering the materials on record there is also no scope to refuse the bail application to the accused-applicant invoking the aforesaid provisions of law in view of the judgment passed by Hon'ble Supreme Court of India in **Satinder Kumar Antil vs. Central Bureau of Investigation and Another** reported in **(2022) 10 SCC 51** referring the para No.2 Learned Senior Counsel submitted that the case of the accused will come under the category of A as mentioned in the said judgment and as such he is entitled to get the protection of anticipatory bail in this case. Learned Senior Counsel further drawn the attention of the Court referring the affidavit annexed with the bail application submitted by Bidyut Debbarma and submitted that there is no reason to disbelieve the said statement in view of the statement of witnesses on record recorded by the I.O. during investigation of the case. So in summing up Learned Senior Counsel urged for granting protection of pre-arrest bail to the accused.

On the other hand, Learned P.P. Mr. R. Datta appearing on behalf of the State-respondent strongly opposed the bail application and submitted that the investigation of the case is in progress. The present case is registered under Section 118(2), 109, 351(3), 3(5) of BNS, 2023 and also under Section 27(2) of the Arms Act. Referring the same he submitted that there is no

reason to believe that Section 27(2) of the Arms Act would not apply in this case. He also drawn the attention of the Court referring the forwarding report of I.O. and submitted that in course of investigation the said victim Bidhu Kumar Debbarma @ Bidhyut although implicated the name of the present accused-applicant to be involved with the alleged offence at the time of recording his statement but later on being gained over he made a false declaration and further he resiled from his earlier statement and stated that he could not identify the same. So Learned P.P. at this stage drawn the attention of this Court considering the nature and allegation of the prosecution at this stage there is no scope to consider the pre-arrest bail application filed by the applicant. Furthermore, the said applicant also involved in some other cases and if at this stage he is granted the concession of pre-arrest bail in that case there is every chance of hampering the investigation of this case and for the sake of proper investigation he urged for rejection of the bail application. In support of his contention he relied upon one citation of the Hon'ble Supreme Court of India in **Jai Prakash Singh vs. State of Bihar & Anr.** reported in **(2012) 4 SCC 379**, wherein in para Nos.18 and 19 Hon'ble the Apex Court observed as under:

"18. This Court in Siddharam Satlingappa Mhetre [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514 : AIR 2011 SC 312] after considering the earlier judgments of this Court laid down certain factors and parameters to be considered while considering an application for anticipatory bail : (SCC pp. 736-37, paras 112-13)

"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 [the] 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."

19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See D.K. Ganesh Babu v. P.T. Manokaran [(2007) 4 SCC 434 : (2007) 2 SCC (Cri) 345] , State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain [(2008) 1 SCC 213 : (2008) 1 SCC (Cri) 176] and Union of

India v. Padam Narain Aggarwal [(2008) 13 SCC 305 : (2009) 1 SCC (Cri) 1] .)”

Referring the same he submitted that considering the nature of prosecution allegation there is no scope to grant bail to the accused-applicant at this stage.

Learned P.P. further referred another citation of the Hon'ble Supreme Court of India in **P. Chidambaram vs. Directorate of Enforcement** reported in **(2019) 9 SCC 24**, in para Nos.69 and 71 Hon'ble the Apex Court observed as under:

"69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

71. Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty except according to procedure prescribed by law. However, the power conferred by Article 21 of the Constitution of India is not unfettered and is qualified by the later part of the Article i.e. "...except according to a procedure prescribed by law". In State of M.P. v. Ram Kishna Balothia [State of M.P. v. Ram Kishna Balothia, (1995) 3 SCC 221 : 1995 SCC (Cri) 439] , the Supreme Court held that the right of anticipatory bail is not a part of Article 21 of the Constitution of India and held as under: (SCC p. 226, para 7)

"7. ... We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed:

'We agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised.'

In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of

offences cannot be considered as violative of Article 21.”

(emphasis supplied)

Referring the same Learned P.P. Mr. Datta submitted that considering the facts and circumstances of the present case there is no scope to grant pre-arrest bail to the accused-applicant.

Again Learned P.P. referred another citation of Hon'ble Supreme Court of India in **Srikant Upadhyay & Ors. vs. State of Bihar & Anr.** reported in **2024 SCC OnLine SC 282** wherein in para No.25 Hon'ble the Apex Court observed as under:

“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 he submitted that since there is direct allegation against the accused-applicant with his involvement of the offence as alleged so if at this stage he is granted pre-arrest bail the investigation of the case will be hampered and furthermore Learned Sessions Judge also rejected his bail application considering the materials on record. So Learned P.P. finally urged for dismissal of this bail application.

In this case the prosecution was set into motion on the basis of an FIR laid by one Smt. Budhu Laxmi Debbarma to O/C Radhapur Police Station alleging inter alia that on 12.05.2025

evening at about 22.00 hours Sahid Debbarma and Santosh Debbarma came to their shop at Dukmali Bazar and threatened them to shop immediately and later on the said miscreants started assaulting her husband with arms when the neighbouring shop owner came them to stop assaulting her husband. That time Bidhyut Debbarma got shot on his leg with pistol with intent of killing her husband and other victim and both the victims were seriously injured and later on they were brought to Kherangbar Hospital and after examination the doctor advised that refer them to AGMC & GBP Hospital and accordingly on the basis of the FIR this present case was registered against the accused.

I have heard detailed argument of Learned Counsels of both the sides and perused to CD also. It is on record that by this time the I.O. has recorded the statement of some material witnesses who are conversant with the facts and circumstances of the case including Bidhu Debbarma who made one declaration according to the accused-applicant before notary that he could not identify the present accused-applicant. But from the initial statement recorded by I.O. on 14.05.2025 it clearly appears that he directly implicated the name of the present accused-applicant with the alleged crime along with other witnesses were present to the P.O. on that relevant point of time. The investigation of the case is in progress. It is not known to this Court what would be the ultimate fate of the case. However at his stage considering the materials on record it appears that there was direct allegation against the accused-applicant to be involved with the alleged crime on the alleged date and time. Furthermore the accused had full knowledge and intention that his act would cause death to the husband of the informant used the pistol and the bullet triggered from the pistol.

Somehow caused injury to the knee of the said Bidhyut Debbarma in place of Hari Kumar Debbarma. Now regarding application of Section 27(2) of the Arms Act as referred by Learned Senior Counsel appearing for the accused-applicant it appears that for quoting a wrong provision of law it cannot be said that the prosecution case is false or fictitious. However, if at this stage Section 27(2) of the Arms Act cannot be applied against the present accused-applicant but still considering the materials on record his implication with the alleged offence punishable under Section 118(2) and Section 109 of BNS cannot be ruled out. Further in course of investigation the I.O. also seized one bullet from the alleged P.O. So after going through the statement of witnesses recorded by I.O. in course of investigation of this case at this stage it appears that some other cases were also lodged against him earlier which shows about the bad antecedent of the accused. So considering the materials on record at this stage I find no scope to consider the pre-arrest bail application of the accused-application. Hence the bail application filed by the accused-application stands rejected.

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

Return back the CD to the I.O. through Learned P.P. along with a copy of this order.

In view of the above, this anticipatory bail application stands disposed of.

**MOUMITA
DATTA**

Moumita

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MOUMITA DATTA
Date: 2025.08.08
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JUDGE