

HIGH COURT OF TRIPURA
AGARTALA

CRL. PETN. No.37 OF 2025

Sahajan Islam,
S/o Najrul Islam, R/o Santipara, Masjidpatti,
P.S. East Agartala, Dist. West Tripura, Tripura.

...Accused-Petitioner

Vrs.

The State of Tripura, represented by the
Principal Secretary to the Government of Tripura,
Dept. of Home, having his office at New Secretariat Complex,
Gorkhabasti, P.O. Kunjaban, P.S. NCC, Sub-Division-Sadar,
District-West Tripura, Pin-799010.

...Respondent.

For the accused-
petitioner : Mr. P. K. Biswas, Sr. Advocate,
Mr. H.K. Bhowmik, Advocate,
Mr. Pujan Biswas, Advocate,
Mr. Chinfu Mog, Advocate.

For the respondent : Mr. Raju Datta, P.P.

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

Order

18.08.2025

Heard learned senior counsel, Mr. P.K. Biswas for the petitioner
and learned P.P., Mr. Raju Datta for the State-respondent.

2. The present petitioner filed one application under Section 482 of
BNSS before the learned Sessions Judge, West Tripura, Agartala praying for
anticipatory bail in connection with East Agartala P.S. Case No.61 of 2025,
dated 09.06.2025, registered under Sections 61/109/148/118(2)/3(5) of BNS,
2023.

3. Learned senior counsel, Mr. Biswas by referring to an order dated 15.07.2025, passed by learned Sessions Judge, West Tripura, Agartala on that application, submits that this is the only order passed by learned Sessions Judge regarding registration of said bail application and by the said order, the case was transferred to the Court of learned Additional Sessions Judge, Court No.4, West Tripura, Agartala for disposal according to law, but as per the screen-shot taken from the website of the District and Sessions Judge's Establishment, Agartala, it appears that after registration of the said bail application, on 15.07.2025 an entry was made in the case information system that the said case was transferred to the Court of learned Additional Sessions Judge, Court No.2, West Tripura Agartala. But, again on the same day, another entry was made later on therein that the said case was transferred to the Court of learned Additional Sessions Judge, Court No.4. Learned senior counsel submits that no order of transferring the case to the Court of learned Additional Sessions Judge, Court no.2 is found available on record and therefore, the contradictory entries as available in the website, gave rise to a suspicion that some anomalies were done regarding transfer of the case from the establishment of learned Sessions Judge, West Tripura, Agartala. According to Ld. Sr. counsel, the bail application was initially made over to the court of Ld. Addl. Sessions Judge, Court no.2 for disposal according to law.

4. Learned senior counsel Mr. Biswas submits that as per decision of the Hon'ble Supreme Court, in the case of ***Sekhar Prasad Mahto @ Shekhar Kushwaha Vrs. The Registrar General, Jharkhand High Court &***

Anr., [Writ Petition(s)(Criminal)No(s).55 of 2025, decided on 07.02.2025],

said bail application ought to have been transferred and heard by learned Additional Sessions Judge, Court No.2, West Tripura, Agartala, inasmuch as the father and brother of present petitioner also earlier filed another bail application bearing No. 104 of 2025 in connection with the same police case and said bail application was decided by learned Additional Sessions Judge, Court No.2.

5. Learned senior counsel, Mr. Biswas further submits that if the order of transfer of the bail application to the Court of learned Additional Sessions Judge, Court No.2 was at all passed by the learned Sessions Judge, obviously, there should be some judicial order in this regard available in the connected record, but, the same being not found therein, it is apprehended that there has been some manipulation in the record. Learned senior counsel also submits that the present bail application bearing No.112 of 2025 is also required to be transferred to the Court of learned Additional Sessions Judge, Court No.2, West Tripura, Agartala for hearing by that Court.

6. On the last occasion, a report was called for from the learned Sessions Judge, West Tripura, Agartala and he has submitted the report, *inter alia*, stating that sometime in the middle part of June, 2025, one bail application before filing of Bail Application No.104 of 2025 was filed in connection with said East Agartala P.S. Case No.61 of 2025, but, just after filing the bail application, before registration of the same, it was withdrawn by the learned counsel of the petitioner and subsequently, same accused persons filed another bail application on 01.07.2025 which was registered as bail

application No.104 of 2025 and same was transferred to the file of learned Additional Sessions Judge, Court No.2, West Tripura, Agartala for its disposal. Thereafter, on 15.07.2025 the present bail application No. 112 of 2025 in connection with same police case was filed by the principal accused person and as the previous bail application was decided by the Court of learned Additional Sessions Judge, Court No.2, Agartala, as per common practice, the present bail application was also transferred to the said Court. But, on the same day, learned Additional Sessions Judge, Court No.2, West Tripura, Agartala sent back the record of bail application No.112/2025 to the filing section of the Court of learned Sessions Judge, West Tripura, Agartala without passing any order or comment. But, verbally learned Additional Sessions Judge, Court No.2, West Tripura, Agartala informed him that he was not interested to hear the bail application since before filing of both the bail applications, learned filing Advocates were waiting for a long days when the roster of the Court of learned Additional Sessions Judge, Court No.2, West Tripura, Agartala comes as filing Advocates were willing to move both the bail applications before the Court of learned Additional Sessions Judge, Court No.2, West Tripura, Agartala and learned filing Advocates were also pursuing the matter with the dealing clerks of the filing section so that all the bail applications are transferred to the Court of learned Sessions Judge, Court No.2, West Tripura, Agartala for hearing.

7. Learned Sessions Judge also mentioned in his report that similar verbal request was received by Mr. Sunil Kr. Singh, learned Additional Sessions Judge, Court No.3, West Tripura, Agartala from the filing Advocates

when he was In-charge of the Court of learned District & Sessions Judge, West Tripura, Agartala.

8. According to the learned Sessions Judge, in that circumstance, he had no other option but to transfer the bail application No.112 of 2025 to the Court of learned Additional Sessions Judge, Court No.4, West Tripura, Agartala, for its disposal in accordance with law.

9. Learned P.P. in this respect submits that as a matter of routine course, the record may be directed to be transferred to the Court of learned Additional Sessions Judge, Court No.2 by the learned Sessions Judge, West Tripura, Agartala and thereafter, it would be for the learned Additional Sessions Judge, Court No.2 to decide as to whether he will hear the matter or abstain himself from hearing it. Learned P.P. also relies on a decision of Delhi High Court in the case of ***Sherry George Vrs. Govt. of NCT of Delhi, 2022 SCC OnLine Del 1031*** to support his submissions.

10. The relevant paragraph Nos. 7 and 8 of ***Sherry George***, as relied upon by learned P.P., is extracted here-under:

“7. The order of the learned Metropolitan Magistrate dated 17th August, 2017 before whom the complaint case against the petitioner was pending, is clearly a recusal order. The Supreme Court in *Association and another vs. Union of India*, 2016 5 (SCC) 1, while dealing with the issue of recusal had observed as under:

"A Judge may recuse at his own, from a case entrusted to him by the Chief Justice. That would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified, must never to be acceded to. For that would give the impression that the Judge had been scared out of the case, just by the force of the objection....."

8. Taking a cue from these observations, it would be proper to hold that an investigation into the cause/reason for recusal by a judge, particularly, by a litigant, would itself be an interference with the course of justice. When a judge recuses, no litigant or third party has any right to intervene, comment or enquire. The recusal has to be respected, whether a reason has been spelt-out in detail or not. Had a judge refrained from giving

a reason for recusal, no one can insist on the judge making such disclosures. The discretion of the concerned judge in the matter of disclosure is absolute.”

11. Learned senior counsel, Mr. Biswas, however, submits that any specific observations made by this Court in the matter of taking decision by learned Additional Sessions Judge, Court No.2 as to whether he will hear the bail application or recuse from hearing, may lead the learned Additional Sessions Judge, Court No.2 to recuse from hearing.

12. This Court has given due consideration to the submissions of both sides and perused the record.

13. As it appears from the report of learned Sessions Judge, West Tripura, Agartala that initially the bail application was transferred to the Court of learned Additional Sessions Judge, Court No.2, West Tripura, Agartala for disposal in accordance with law, but, according to the petitioner, no such order is available in the record by which it was sent to the Court of learned Additional Sessions Judge, Court No.2. Anyway, this Court is not entering into that aspect in a deeper manner as presently record of said BA no.112 of 2025 is not available before the Court. But in case, the record was verbally assigned to the Court of Ld. Addl. Sessions Judge, Court no.2 by Ld. Sessions Judge, the court hastens to observe that there is no procedure of transferring a case to any court for disposal by any verbal order, such transfer must always be done by a written order. And in case, it was transferred by a written order, Ld. Sessions Judge will verify whether the same is available in the record or not. What appears from the report of learned Sessions Judge that after the record was transferred to the Court of learned Additional Sessions Judge,

Court No.2, said Court without passing any order in that case sent back the record to the filing section of the Court of learned Sessions Judge, West Tripura, Agartala. This procedure as adopted by learned Additional Sessions Judge, Court No.2, West Tripura, Agartala is not acceptable. When a case is made over to any Court for disposal according to Law, and the presiding officer of said Court, if for any particular reason, decides to abstain from hearing the matter, said Presiding Judge should indicate the same in the record for information of the parties to the lis and to communicate his decision in this regard to learned Sessions Judge waiting for further order from said Court. But, without making any such indication or without making any communication with the Court of learned Sessions Judge, said Court cannot simply send back the record to the filing section without observing proper procedure.

14. In any case, a Judicial Officer expresses his/her unwillingness to hear the matter for any reason, he/she is always at liberty to do so, but, that should be expressed and communicated in proper manner, otherwise, in normal course he/she should hear the matter. Delhi High Court in *Sherry George* has also clarified the position that when a judge recuses to hear any matter, no litigant or third party has any right to intervene, comment or enquire on it. But such recusal should also be done in a proper manner and not by sending the record back in the manner as reported by Ld. Sessions Judge.

15. In the judgment of ***Shekhar Prasad Mahto*** (supra), as relied on by learned senior counsel Mr. Biswas, the Hon'ble Apex Court reiterated the

decision of three-Judge Bench of the Hon'ble Apex Court in case of ***SLP(Crl.) No.7203 of 2003*** that where the matters arising out of the same FIR are placed before different Judges, this leads to anomalous situation, inasmuch as some of the learned Judges grant bail and some other Judges refuse to grant bail, even when the role attributed to the applicants is almost similar. Hon'ble Apex Court, however, in the above ***Shekhar Prasad Mahato*** (supra) has also clarified that if in a particular High Court, the bail applications are assigned to different single Judge/Bench, in that event, all the applications arising out of same FIR should be placed before one learned Judge and if on account of change of roster, the learned Judge who was earlier dealing with the bail applications is not taking up the bail matters, said direction would not be applicable. But, in order to maintain consistency in the views taken by the Court, the learned Judge who would hear the subsequent applications filed for bail, may give due weightage to the views taken by the earlier Judge, who had dealt with the applications arising out of the same FIR. Based on this decision, the petitioner is pressing for hearing of both the bail applications by same Court.

16. In the instant case also, when the previous bail application No.104 of 2025 was heard by the Court of learned Additional Sessions Judge, Court No.2, West Tripura, Agartala, the present bail application No.112 of 2025 is required to be transferred to the said Court and in normal course, said Court is to hear the bail applications but, in any event, the Presiding Judge of said Court expresses his unwillingness to hear the matter for any particular

reason and decides to abstain from hearing the same, he shall act accordingly in the light what has been discussed in the earlier paragraphs.

17. In view of above said discussions, the instant petition is allowed.

18. The learned Sessions Judge, West Tripura, Agartala is directed to immediately withdraw the bail application No.112 of 2025 from the Court of learned Additional Sessions Judge, Court No.4, West Tripura, Agartala and to transfer the same to the Court of learned Additional Sessions Judge, Court No.2, West Tripura, Agartala for disposal of the same in accordance with law.

19. With the above observations and directions, the instant criminal petition stands disposed of.

Send a copy of this order forthwith to learned Sessions Judge, West Tripura, Agartala.

JUDGE