

**HIGH COURT OF TRIPURA
AGARTALA**

B.A.No.75 of 2025

Sri Subrata Mallik

S/O Hira Lal Mallik
Of Mallik Para, Sarma
P.O.- Sarma, P.S. Gandacherra,
Dist.- Dhalai Tripura.

**(Petitioner on behalf of the in-custody
accused persons)**

----- Applicant (s)

On behalf of-

- 1. Sri Dipak Chandra Saha(52),**
S/O. Lt. Nakul Chandra Saha
Of Durgapur, Gandacherra
P.S.-Gandacherra,
District- Dhalai Tripura.
- 2. Smt. Debika Saha (46),**
S/O: Sri Dipak Chandra Saha
Of Durgapur, Gandacherra
P.S.- Gandacherra.
Dist.- Dhalai Tripura.

----- Accused Persons-in-custody(s)

Versus

The State of Tripura

-----Respondent(s)

For Applicant (s)	:	Mr. Subrata Sarkar, Sr. Adv, Ms. Ayesha S. Hirawat, Adv, Ms. Megha Sarkar, Adv.
For Respondent(s)	:	Mr. Sankar Lodh, Spl. P.P., Mr. Raju Datta, P.P., Mr. Rajib Saha, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

03/11/2025

This bail application under Section 483 of BNSS, 2023
is filed for granting bail to the accused persons-in-custody namely,
Sri Dipak Chandra Saha and Smt. Debika Saha. Heard Learned

Senior Counsel, Mr. S. Sarkar assisted by Learned Counsel, Mr. Ayesha S. Hirawat and Learned Counsel, Mr. Megha Sarkar appearing on behalf of the accused persons-in-custody. Also heard Learned Spl. P.P., Mr. S. Lodh assisted by Learned P.P., Mr. Raju Datta appearing on behalf of the State-respondent.

Taking part in the hearing, Learned Senior Counsel, Mr. Sarkar first of all drawn the attention of the Court referring the contents of the FIR and submitted that these present two accused persons are not FIR named. However, in course of investigation their names revealed and referring the different forwarding reports of the I.O. annexed with the bail application, Learned Senior Counsel submitted that on perusal of the said relevant prosecution papers, it will clearly be transpired that the present accused persons in custody are in no way involved with the alleged murder of the deceased rather only to the extent they had carried the trolley bag to Agartala to Gandacherra which contained the alleged dead body of the deceased. Furthermore, Learned Senior Counsel also submitted that though the present case has been registered under Sections 140(1)/103(1)/238(a)/238(b)/61(2)/3(5) of BNS but from the relevant prosecution papers the involvement of accused persons only attracts Section 238(a) and Section 238(b) of BNS which are bailable in nature as such they cannot be held responsible for the alleged murder of the deceased. Learned Senior Counsel, thereafter, submitted that these accused persons-in-custody are lodging in jail for last 142 days and by this time, the I.O. has submitted chargesheet against all the accused persons. So, at this stage, there remains no

ground to detain the accused persons-in-custody furthermore and there is also no chance of tampering the evidence on record on their part, since, they are the residents of Gandacherra. So, in summing up, Learned Senior Counsel urged for releasing the accused persons on bail in any condition to enable them to conduct their defence properly in this case. In this regard, Learned Senior Counsel relied upon one citation of the Hon'ble Supreme Court of India in **Sanjay Chandra vs. Central Bureau of Investigation** reported in **(2012) 1 SCC 40**, wherein in para Nos.10 and 21, Hon'ble the Apex Court observed as under:

"10. Shri Jethmalani submitted that there is not even a prima facie case against the accused and would make references to the charge-sheet and the statement of several witnesses. He would emphatically submit that none of the ingredients of the offences charged with were stated in the charge-sheet. He would further contend that even if, there is a prima facie case, the rule is still bail, and not jail, as per the dicta of this Court in several cases.

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."

Referring the same, Learned Senior Counsel submitted that in view of the principle of law laid down by the Hon'ble Apex Court and considering the facts and circumstances of the case and also the nature of involvement of the accused persons with the alleged crime they may be granted bail in any condition.

He further referred another citation of the Hon'ble Supreme Court of India in **State of Kerala vs. Raneef** reported

in **(2011) 1 SCC 784**, wherein in para No.15, Hon'ble the Apex Court observed as under:

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille."

Referring the said citation, Learned Senior Counsel further submitted that in this case, 42 nos. of witnesses have been cited as witness in the chargesheet by the I.O. and if the entire process is to exhausted in that case, a considerable period will be required for conclusion of trial and here in the case at hand, considering the materials on record, so far collected by I.O., during the course of investigation, it appears that there is every possibility that on conclusion of trial, the accused would be acquitted. So, Learned Senior Counsel submitted that since the accused persons-in-custody are languishing in jail for a considerable long period and no purpose would be served by detaining them in jail, so, Learned Senior Counsel, at this stage urged for released the accused persons on bail in any condition.

On the other hand, Learned Spl. P.P., Mr. Sankar Lodh strongly opposed the bail application and submitted that this is a planned murder of the deceased and from the materials on record, so far collected by I.O., during investigation, their knowledge with the alleged crime cannot be ruled out. Admittedly, these two

accused persons-in-custody directly did not participate in the commission of murder of the deceased, but from the facts and circumstances the case and the materials on record, their *prima facie* involvement cannot be ruled out and furthermore, they are the close relatives of the two prime witnesses of this case and if they are released on bail, they will try to influence the witnesses since they are their relatives and furthermore, if they are released on bail the entire trial would be frustrated. So, for proper trial of this case, their further detention is required. So, Learned Spl. P.P. strongly opposed the bail application filed by the accused persons.

It was further submitted that there are sufficient materials showing their implications with the alleged offence in the case diary and in support of his contention, Learned Spl. P.P. relied upon one citation of the Hon'ble Supreme Court of India In **State of Karnataka vs. Sri Darshan Etc.** reported in **(2025) SCC OnLine SC 1702**, wherein in para No.20.4.1, Hon'ble the Apex Court observed as under:

"20.4.1. It is well settled that the mere filing of a charge-sheet does not confer an indefeasible right to bail. Likewise, the mere prospect of a prolonged trial cannot, by itself, outweigh the gravity of the offence, the incriminating material gathered during investigation, or the likelihood of tampering with witnesses.

He further referred para Nos.22(a) and (b) of the said citation. 22:

(a) Nature and Gravity of the offence

22.1. The seriousness and heinous nature of the alleged offence is a significant factor for consideration, while evaluating a plea for cancellation of bail.

22.1.1. In Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598, this Court held that "the nature of the offence is one of the basic considerations for the

grant of bail - the more heinous the crime, the greater the chance of refusal of bail, though the exercise of judicial discretion in such matters cannot be exhaustively defined."

22.1.2. Similarly, in *Panchanan Mishra v. Digambar Mishra* (2005) 3 SCC 143, the Court observed that "the object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty from tampering with the evidence in heinous crimes."

22.1.3. In the present case, the accused along with the co-accused, is charged under Sections 120B, 302, 201 and 204 IPC, which relate to conspiracy, murder, destruction of evidence, and causing disappearance of evidence. The allegation is of a brutal and custodial murder of a young man, who was allegedly kidnapped, tortured, and beaten to death by the accused for sending objectionable messages to A2. The victim was a 26-year-old daily wage earner, and the crime was allegedly committed to protect the reputation of A1, the partner of A2, a celebrity.

22.1.4. This is not a case of sudden provocation or emotional outburst. The evidence indicates a pre-meditated and orchestrated crime, where the accused not only allegedly took the law into his own hands, but also engaged in systematic destruction of evidence, including: deleting CCTV footage, bribing co-accused to falsely surrender, and using police and local influence to derail the investigation.

22.1.5. As this Court warned in *Jagan Kishore v. State of A.P.*, 2003 CrI. LJ 1919, the grant of bail in cases involving custodial torture and extra-judicial execution of an alleged offender erodes public confidence in the rule of law. Thus, the very gravity of the offence justifies cancellation of bail, especially when the liberty granted to A2 is likely to subvert the integrity of the trial process.

(b) Likelihood of tampering with evidence and influencing witnesses

22.2. The record reveals concrete acts of interference with the investigation including:

- A2's role in orchestrating false surrenders by co-accused (A10, A14);
- Payments made to cover up the crime (as per co-accused statements);
- Connections with police officials who delayed and diluted the FIR and postmortem procedures;
- Deletion of CCTV evidence from A1's residence;
- Continued influence over prosecution witnesses, as seen from public appearances after bail.

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."

22.2.2. In State v. Amarmani Tripathi 2005 (8) SCC 21, this Court stated that "the Court must examine the likelihood of the accused tampering with prosecution witnesses or attempting to subvert justice. Bail should not be granted if the accused is likely to interfere with the trial process."

22.2.3. Further, it was held that "even the likelihood of the accused influencing witnesses or tampering with evidence is sufficient to deny bail." In Deepak Yadav v. State of UP (2022) 8 SCC 559, bail was cancelled owing to apprehension of tampering with witnesses.

22.2.4. In P v. State of M.P. (2022) 15 SCC 211, the Court held that bail can be cancelled if the accused:

- **attempts to tamper with evidence;**
- **influences witnesses;**
- **induces others to make false statements;**
- **or even if there is a genuine apprehension of miscarriage of justice.**

22.2.5. The appellant alleged that A2 is not merely misusing liberty post-bail but is the mastermind of efforts to derail the investigation. In such circumstances, the preponderance of probabilities test applies (as per Sanjay Gandhi v. Delhi Administration case) and the prosecution need not prove guilt beyond reasonable doubt at this stage."

Referring the same, he submitted that filing of chargesheet and long list of witnesses cannot be a ground for granting bail, rather the seriousness and heinous nature of the alleged offence is to be taken into consideration before granting bail and finally, Learned Spl. P.P. urged for rejection of the bail application of the accused persons.

I have heard both the sides at length and gone through the relevant prosecution papers. In this case, the prosecution was set into motion on the basis of an FIR laid by one Jahangir Miah to O/C NCC P.S., Agartala on 11.06.2025 at about 0018 hours alleging inter alia that he is the uncle of one Sariful Hasan @ Sarif. On 08.06.2025 one Dibakar Saha, son of Dipak Chandra Saha of Gandacherra presently residing at Bankumari and his friend

Nabanita contacted over mobile phone of his nephew and asked Sarif to visit to the location of Joydeep Das located in Indranagar, Kabarkhala, opposite of Smart Point at about 9.00 PM. That time Dibakar Saha, Nabanita and others were present to the residence Joydeep Das. At 11.00 PM mother of Sharif contacted him over phone but he did not respond and he was called until midnight and he did not receive any calls. After which his phone was found to be switched off. From the night itself, searching began with the local residents and on searching at about 5.00 AM, the bike bearing No.TR 01 AH 8066 was found at the end of the lane of Joydeep Das's house. Thereafter, they all together entered the house premise of Joydeep Das and found Dibakar Saha was present therein. After the incident, they all started searching for Sarif and informed the Police of GBP Outpost verbally. But Sarif could not be traced out. So, suspecting Dibakar and his associates called him over phone and from the mother of Sharif, it was learnt that Dibakar Saha did his MBBS from Bangladesh and about 1.5 months back Sarif was administered with some poisonous medicines for which he became unconscious and seriously felt ill. So, according to the informant, with a premeditated plan said Dibakar and others called him over phone and abducted him with a view to kill him. This is the sum and substance of the FIR. It is the settled position of law that FIR is not a substantive piece of evidence and on the basis of FIR, the criminal prosecution generally sets into motion.

Here in the case at hand on the basis of the said FIR O/C NCC P.S. registered NCC, P.S. case No.32 of 2025 under

Sections 141(1)/3(5) of BNS. Initially, perhaps thereafter, Sections 103(1)/238(a)/238(b)/61(2)(a) of BNS was added. By this time, the investigation of the case is completed and Learned CJM, West Tripura, Agartala by order dated 06.09.2025 has taken cognizance of offence punishable under Sections 61(2)(a)/238(a)/238(b)/127/58/103/3(5) of BNS, 2023 against the accused person, Dibakar Saha, Nabanita Das, Joydeep Das, Animesh Yadav, Dipak Chandra Saha and Debika Saha. The case is yet to be committed to the Court of Sessions.

I have heard detailed arguments of both the sides and perused the materials so far collected by I.O. during investigation of this case. It is the admitted position that due to the act of the alleged accused persons, Sariful Hasan @ Sarif lost his life. I have also gone through the statement of two witnesses namely, Souramita Saha and her mother. It is on record that the present accused persons-in-custody are the near relatives of said witnesses. From the statements of witnesses and also the disclosure statements of the co-accused persons and the other materials so far collected by I.O., it appears that admittedly, the present two accused persons-in-custody were not directly involved with the alleged murder of the of the deceased. But at the same time, it cannot be said that they had no idea or knowledge about the alleged commission of offence. Rather they were also part of the alleged criminal conspiracy for which the deceased had lost his life by the heinous act of the other accused persons-in-custody.

Situated thus, at this stage, it appears to this Court that if they are released on bail in that case they may tamper or

influence the witnesses of the prosecution and there will be every chance of vitiating the trial of the case. Hence, I did not find any scope to consider the bail application filed by the accused persons-in-custody. Accordingly, the bail application filed stands rejected. The accused persons are to remain in J/C as before. Since in this case investigation is completed and chargesheet is submitted by I.O. and the other accused persons are also in custody, so, Learned CJM shall make all endeavour for commitment of this case to the Court of Sessions at an earliest.

With this observation, the bail application filed stands rejected and thus disposed of. Send down the record to the Learned Trial Court alongwith a copy of this order. Return back the Case Diary to I.O. through Learned P.P. along with a copy of this order.

JUDGE

AMRITA DEB

Purnita

Digitally signed by AMRITA
DEB
Date: 2025.11.05 10:48:11
+05'30'