

**HIGH COURT OF TRIPURA  
AGARTALA**

**A.B. No.79 of 2025**

**Sahajan Islam**

Son of Najrul Islam, aged about 35 years,  
Resident of Santipara, Masjidpatti, P.O. Agartala-799001,  
P.S.- East Agartala, District-West Tripura.

---- Applicant

Versus

**The State of Tripura**

----Respondent(s)

For Applicant(s) : Mr. Pujan Biswas, Adv,  
Mr. Rishiraj Nath, Adv.

For Respondent(s) : Mr. Raju Datta, P.P.,  
Mr. Rajib Saha, Addl. P.P.

**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Order**

**27/10/2025**

Heard Learned Counsel, Mr. Pujan Biswas along with  
Learned Counsel Mr. Rishiraj Nath appearing on behalf of the  
applicant-accused and also heard, Learned P.P. Mr. Raju Datta  
along with Learned Addl. P.P. Mr. Rajib Saha appearing on behalf  
of the State-respondent.

This pre-arrest bail application under Section 482 of  
BNSS, 2023 is filed for granting pre-arrest bail to the applicant-  
accused in connection with East Agartala PS case No.61 of 2025  
for the offence punishable under Section 61/109/148/118(2)/3(5)  
of BNS, 2023 and added Sections 192/196 of BNS, 2023.

As ordered earlier, this Court has received the record  
from the Learned Trial Court and also, Learned P.P. has produced  
the Case Diary.

At the time of hearing, Learned Counsel appearing for  
the applicant-accused first of all drawn the attention of the Court  
that on the alleged day the informant party ransacked the house

of the applicant-accused and they have assaulted the female members and his parents and brother and in this regard although FIR was laid but till today no action has been taken by the police rather on a false allegation of the informant the present case has been registered against the applicant-accused. It was further submitted that under Article 19 of the Constitution of India liberty is given to a citizen to express his freedom of right and expression and accordingly the present applicant-accused made a post against the Chief Minister of the State and expressed his opinion which did not constitute any offence being a citizen of India and in a democracy nobody can restrain anyone to express his independent opinion and the applicant-accused by his post did not commit any offence but the Learned Addl. Sessions Judge, Court No.2 did not consider the same and rejected the bail application of the applicant-accused for which the interference of the Court is required.

In this regard, reliance was placed upon one citation of the Hon'ble Supreme Court of India in **Imran Pratapgadhi vs. State of Gujarat & Anr.** reported in **2025 SCC OnLine SC 678** wherein in para No.13, 14, 26 and 32, Hon'ble the Apex Court observed as under:

**"13. Now, let us examine whether any offence as alleged is attracted. Section 196 of the BNS reads thus:**

**"196. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—(1) Whoever—**

**(a) by words, either spoken or written, or by signs or by visible representations or through electronic communication or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or**

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity; or

(c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in subsection (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

14. The offence under Section 196 is attracted when the words, either spoken or written, or by signs or visible representations, promote enmity between different groups, on the grounds of religion, race, place of birth, residence, language, caste or, community or any other ground. The offence will be attracted when the words either spoken or written, or signs or visible representation, promote or attempt to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. On a plain reading of the poem, we find that the same has nothing to do with any religion, caste, community or any particular group. The poem's words do not bring about or promote disharmony or feelings of hatred or ill-will. It only seeks to challenge the injustice made by the ruler. It is impossible to say that the words used by the appellant disturb or are likely to disturb public tranquility. Therefore, neither clause (a) nor clause (b) of Section 196(1) are attracted. There is no allegation against the appellant of organising any exercise, movement, drill or similar activity. There is no allegation against the appellant that he uttered the words in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies. Hence, clause (c) will have no application. The appellant has put a video of a mass marriage function, and in the background, the words are uttered. Therefore, Section 196 can have no application.

26. Coming back to the offence punishable under Section 196 of the BNS to decide whether the words, either spoken or written or by sign or by visible representations or through electronic communication or otherwise, lead to the consequences provided in the Section. The police officer to whom information is furnished will have to read or hear the words written or spoken, and by taking the same as correct, decide whether an offence under Section 196 is made out. Reading of written words, or hearing spoken words will be necessary to determine whether the contents make out a case of the commission of a

cognizable offence. The same is the case with offences punishable under Sections 197, 299 and 302 of the BNS. Therefore, to ascertain whether the information received by an officer-in-charge of the police station makes out a cognizable offence, the officer must consider the meaning of the spoken or written words. This act on the part of the police officer will not amount to making a preliminary inquiry which is not permissible under sub-Section (1) of Section 173.

#### **STANDARD TO BE APPLIED**

32. At this stage, we cannot resist the temptation of quoting what Bose and Puranik, JJ., authored as the Judges of the erstwhile Nagpur High Court. In the case of *Bhagwati Charan Shukla v. Provincial Government, C.P. & Berar*<sup>3</sup>, in paragraph 67, it is held thus:

"67. Viewing the impugned article in that light we are of opinion, as a matter of fact, that it is not seditious because its professed aim is to obtain a change of Government through the ballot box and not to incite people to a disobedience of the laws of Government. Some extravagance of language there is, and there is the usual crude emotional appeal which is the stock in trade of the demagogue, as well as a blundering and ineffective attempt to ape the poets. But that is all. However, it is not enough to find that the writer is not guilty of sedition because we are concerned with Section 4 of the Press (Emergency Powers) Act which travels wider than S. 124 A. We have therefore further to see whether these words tend directly or indirectly to incite to sedition, or, in the words of the Ordinance, whether they are intended or are likely to produce that effect. We say deliberately whether the words are likely to incite to sedition because, as the Federal Court points out, the formula of words used in S. 4, as also in the Ordinance, is precisely the formula used in S. 124 A, therefore to the extent of the formula the two things are the same. The only difference is that under the Press Act we have to consider not only whether there is sedition in fact but also whether the words tend, directly or indirectly, to excite to sedition and whether they are intended or are likely to produce that effect. We pause to observe that here, as in the case of reasonable doubt in criminal cases, and as in the case of putting in fear of hurt in a matter of assault, we must use the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. Using those standards we hold as a fact that the effects apprehended by the Crown and required by the section are not likely to be caused by this article, nor do the words used, viewed in their proper setting, tend to cause that effect. The paper is in English. It has a limited circulation. It is read by those who know and understand English. It is a party paper and is read mainly by persons who are politically minded. They are aware of contemporary political thought and occurrences. They realise as well as any one else that neither His Excellency the Governor nor his advisers went round shooting and killing persons. They know that these acts were done by the troops and by the police. They know that there was a demand for an impartial investigation and a judicial enquiry. They know that the demand was refused and they know that the whole complaint, so far as Government is concerned, lies there. They

are therefore no more likely to attribute to Government any greater responsibility than Mr. Jamnadas Mehta and other members of the Central Assembly did. They are as much aware as the writer that the appeal is for a constitutional change of Government by constitutional means. They were not, in our opinion, likely to interpret it otherwise. Therefore, in our judgment, the article does not tend, directly or indirectly to sedition, nor is it likely to produce that result. In our view, the applications should be allowed and the orders of forfeiture set aside. The costs should, we think, in each case be paid by the Crown."

(emphasis added)"

Referring the same, Learned Counsel submitted that in view of the principle laid down by the Hon'ble Apex Court in the aforementioned case no offence has been committed by the present accused to attract the provision of Section 196 of BNS by making facebook post.

Learned Counsel Mr. Biswas further submitted that in this case custodial interrogation is not required and prosecution also could not make any case for granting custodial interrogation. In this regard, he made reliance upon another citation of the Hon'ble Supreme Court of India in **Ashok Kumar vs. State of Union Territory Chandigarh** reported in **(2024) 12 SCC 199** wherein in para No.10, Hon'ble the Apex Court observed as under:

"10. There is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of investigation."

Learned Counsel again submitted that the prosecution in this case may take the stand that warrant of arrest was issued against the applicant-accused and for that there is no scope to consider the bail application. To rebut the said submission,

Learned Counsel relied upon another citation of Hon'ble the Apex Court in **Asha Dubey vs. State of Madhya Pradesh** reported in **2024 SCC OnLine SC 5633**, wherein in para No.8 Hon'ble the Apex Court observed as under:

**"8. Coming to the consideration of anticipatory bail, in the event of the declaration under Section 82 of the Cr.P.C., it is not as if in all cases that there will be a total embargo on considering the application for the grant of anticipatory bail."**

Referring the same, he submitted that in view of the said citation there is no embargo to approach for granting pre-arrest bail.

Learned Counsel again relied upon another citation of the Hon'ble Apex Court in **Kashmira Singh vs. Duman Singh** reported in **AIR 1996 SC 2176**, wherein in para No.8, 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, Learned Counsel submitted that since there was scuffling in between the rival parties on the relevant date and time, so, in view of the principle of law laid down by the Hon'ble Apex Court there is no bar to consider pre-arrest bail application of the accused.

Learned Counsel again referred another citation of the Hon'ble Apex Court in **Raj Kumar Jain & Anr. vs. Kundan Jain**

**& Anr.**, reported in **(2004) 10 SCC 612**, wherein para No.10

Hon'ble the Apex Court observed as under:

"10. Having heard learned counsel for the parties and perused the records, we are convinced that the impugned order of the High Court cancelling the anticipatory bail granted to the appellants cannot be sustained in law. It is an admitted fact that within 14 days of the marriage of the first appellant to Dimple Jain, daughter of the first respondent herein, disputes had arisen between them and they had started living separately. There were complaints and counter-complaints between the parties which had compelled the appellants herein and two others to obtain anticipatory bail from the High Court. It is also an admitted fact that pursuant to the directions issued by the High Court in the said bail order, the persons who sought bail from the High Court including these two appellants, had surrendered before the court and offered bail bonds which was accepted by the court concerned and in furtherance of the directions issued by the High Court though Appellant 2 was not required to attend the police station without being summoned, he along with Appellant 1, was attending the police station everyday. In this background, if really a threat as alleged by Harish Bhuva was administered to him on 15-2-2003 a complaint in this regard would have certainly been lodged either on that day itself or on the next day. On the contrary, as could be seen from the records, a complaint was posted only on 17-2-2003 at about 1956 hours through speed post. Of course, there is an allegation that on 16th evening, an oral complaint was lodged but there is no record substantiating the same, except the ipse dixit of Harish Bhuva. Then again, if we read the affidavit filed by the Inspector of Police, which was 8 months after the alleged threat, it is seen that this officer makes a complaint for the first time that the second appellant has not complied with the conditions imposed by the High Court while granting bail of appearing before the police. This is a fact, in our opinion, far from the truth. As a matter of fact, as per the order granting anticipatory bail to the appellants and two others, there was a direction only with regard to the first appellant herein to stay in Chennai for a week, others were not even required to be in Chennai but they had to report to the police as and when required by the police. If really the second appellant had disobeyed this direction, we would not have expected the police officer to condone this default and wait for nearly 10 months before making an issue of it in an application filed for cancellation of bail by the first respondent. It is further seen from the said affidavit of the Police Inspector that Harish Bhuva lodged the complaint as to the threat administered to him only on 17-2-2003. She has not stated anything about the oral complaint that is allegedly lodged by the said Harish Bhuva on 16-2-2003. If we notice the allegation made in the affidavit filed by Harish Bhuva in this regard, it could be seen that he informed the first respondent about the visit of the appellant to his house and the first respondent promised him that his interest would be protected in a manner known to law but he does not state in that affidavit that he tried to lodge an oral complaint on 16-2-2003. As noticed above, in the background of the facts of this case, we find it difficult to believe that this witness would have failed to inform the first respondent of the visit of the appellants on 15-2-2003 itself and the first respondent or the said Harish Bhuva would have failed to lodge a complaint with the police concerned immediately thereafter either on 15-2-2003 or 16-2-2003. The actual complaint lodged as stated above, was only on 17-2-2003

**and that too was only posted at 1956 hours. This delay in lodging a complaint itself creates a doubt in our mind as to the authenticity of this complaint. In this factual background, we are of the opinion that the High Court was not justified in cancelling the bail granted."**

Reference was further made in another citation of the Hon'ble Supreme Court in **Bashishth Singh & Anr. vs. State of Bihar** reported in **(2002) 10 SCC 384**, wherein in para No.2, Hon'ble the Apex Court observed as under:

**"2. The appellants are involved in a case for which there is a cross-case (or counter-case as it can be called). The case against the appellants is based on the FIR lodged by the complainant Ram Narain Singh. The counter-case was built up on the strength of the FIR lodged by the 2nd appellant. Both the cases were investigated but only in one case final report has been laid. Whatever be the position, we feel that this is a case where the appellants can be let on bail during the trial period. We, therefore, order the appellants to be released on bail on each of them executing a bond in a sum of Rs 25,000 with solvent sureties to the satisfaction of the Sessions Judge, Kaimur."**

Referring the same, Learned Counsel submitted that there is case and counter case amongst the rival parties. So, considering the materials on record and the facts and circumstances of the case, the present applicant-accused deserves to be released on pre-arrest bail.

It was further submitted that earlier Learned Court below granted bail to the brother and father of the accused and challenging that order, the State preferred application for cancellation of bail and this High Court by order dated 15.10.2025 in connection with B.A. No.58 of 2025 cancelled the bail granted to the brother and father of the accused and challenging that they preferred SLP before the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 25.09.2025 in Special Leave to appeal (Criminal) No.15271 of 2025 stayed the operation of the said judgment/order and finally Learned Counsel submitted that since the informant of the alleged case and his associates

committed the crime on the alleged day and ransacked the house of the present applicant-accused but till today no action has yet been taken by the police on the said FIR. So, considering the materials on record and the facts and circumstances of the case, Learned Counsel urged for releasing the accused on pre-arrest bail in any condition.

On the other hand, Learned P.P. Mr. Raju Datta appearing on behalf of the State-respondent strongly opposed the pre-arrest bail application filed by the applicant-accused and submitted that this present application is not maintainable in view of the fact that in course of investigation, warrant and thereafter proclamation was issued against the present applicant-accused which is still pending for execution. But inspite of issuing of warrant and proclamation till today the applicant-accused is absconding without any cooperation with the investigating agency nor surrendered before the Learned Trial Court. So, Learned P.P. submitted that this present application is not maintainable.

Thereafter, Learned P.P. also drawn the attention of the Court referring the second part of the FIR and submitted that if it is found that there is no material against the applicant-accused under Section 196 of BNS but still there is sufficient materials showing his implication with the alleged crime punishable under Section 61/109/148/118(2)/3(5) of BNS, 2023. Learned P.P. also referred different pages of the Case Diary and submitted that considering the materials on record there is no scope to consider the pre-arrest bail application filed by the applicant-accused. It was further submitted that in course of investigation sufficient

materials have been collected by IO showing implication of the accused with the alleged crime. So, Learned P.P. considering the materials on record urged for dismissal of the pre-arrest bail application.

Reference was made by Learned P.P. upon one citation of Hon'ble the Apex Court in **Srikant Upadhyay & Ors. vs. State of Bihar & Anr.** reported in **(2024) 12 SCC 382** wherein para Nos.29 and 30, Hon'ble the Apex Court observed as under:

"29. Hence, the appellants cannot be heard to contend that the application for anticipatory bail filed in November 2022 could not have been adjourned without passing interim order. At any rate, the said application was rejected on 4-4-2023 [Srikant Upadhyay v. State of Bihar, 2023 SCC OnLine Pat 9425] . Pending the application for anticipatory bail, in the absence of an interim protection, if a police officer can arrest the accused concerned how can it be contended that the court which issued summons on account of non-obedience to comply with its order for appearance and then issuing warrant of arrest cannot proceed further in terms of the provisions under Section 82CrPC, merely because of the pendency of an application for anticipatory bail. If the said position is accepted the same would be adopted as a ruse to escape from the impact and consequences of issuance of warrant for arrest and also from the issuance of proclamation under Section 82CrPC, by filing successive applications for anticipatory bail. In such circumstances, and in the absence of any statutory prohibition and further, taking note of the position of law which enables a police officer to arrest the applicant for anticipatory bail if pending an application for anticipatory bail the matter is adjourned but no interim order was passed. We have no hesitation to answer the question posed for consideration in the negative. In other words, it is made clear that in the absence of any interim order, pendency of an application for anticipatory bail shall not bar the trial court in issuing/proceeding with steps for proclamation and in taking steps under Section 83CrPC, in accordance with law.

30. 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 keeps absconding is not entitled to such grant."

Referring the same, Learned Counsel submitted that since in this case warrant and proclamation is still pending against the accused, so, in view of the principle of law laid down by the Hon'ble Apex Court the present application is not maintainable and the same is liable to be dismissed henceforth.

Learned P.P. also referred another citation of the Hon'ble Supreme Court of India reported in **(2019) 20 SCC 524 [titled as State of Madhya Pradesh vs. Harjeet Singh & Anr.]**, 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 [(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, Learned P.P. submitted that if it is found that there was intention and knowledge to cause hurt on the part of the accused. In that case, that would attract Section 307 of IPC here in the case at hand Section 109 of BNS, 2023 and further submitted that from the materials on record it is clear that there were sufficient materials against the applicant-accused showing his implication with the alleged offence punishable under Section 109 of IPC.

Learned P.P. also referred another citation of the Hon'ble Apex Court reported in **(2012) 4 SCC 379 [titled as *Jai Prakash Singh vs. State of Bihar & Anr.*]**, wherein para Nos.13, 15 and 16, Hon'ble the Apex Court observed as under:

**"13. There is no substantial difference between Sections 438 and 439 CrPC so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.**

**15. While deciding the aforesaid cases, this Court referred to the 41st Report of the Indian Law Commission dated 24-9-1969 recommending the introduction of a provision for grant of anticipatory bail wherein it has been observed that "power to grant anticipatory bail should be exercised in very exceptional cases".**

**16. Ms Kavita Jha, learned counsel appearing for the respondent-accused has vehemently advanced the arguments on the concept of life and liberty enshrined in Article 21 of the Constitution of India placing a very heavy reliance on the observations made by this Court in *Siddharam Satlingappa Mhetre v. State of Maharashtra* [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514 : AIR 2011 SC 312] , and submitted that unless the custodial interrogation is warranted in the facts and circumstances of the case, not granting anticipatory bail amounts to denial of the rights conferred upon a citizen/person under Article 21 of the Constitution."**

Referring the same, Learned P.P. also submitted that in view of the principle of law laid down by the Hon'ble the Apex Court this present application for granting pre-arrest bail deserves

no consideration rather the applicant be asked to surrender before the Learned Trial Court.

Learned P.P. further referred another citation of the Hon'ble Apex Court reported in **(2019) 9 SCC 24 [titled as P. Chidambaram vs. Directorate of Enforcement]**, wherein in para Nos.72 and 83, Hon'ble the Apex Court observed as under:

**"72. We are conscious of the fact that the legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights—safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.**

**83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."**

Referring the same, Learned P.P. submitted that in view of the facts and circumstances of this case there is no scope to grant pre-arrest bail to the accused since processes have already been issued against him.

Further, reference was made to another citation of the Hon'ble Supreme Court regarding custodial interrogation reported in **(2022) 17 SCC 391 [titled as Sumitha Pradeep vs. Arun Kumar C.K. & Anr.]**, 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 POCSO 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."

Lastly, Learned P.P. relied upon another citation of the Hon'ble Supreme Court reported in **(2012) 8 SCC 730 [titled as *Lavesh vs. State (NCT of Delhi)*]**, wherein in para No.12, Hon'ble the Apex Court observed as under:

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

Referring the same, Learned P.P. submitted that since in this case warrant of arrest and proclamation have been issued against the accused but the accused did not surrender before the Court, so, at this stage there is no scope to consider the pre-arrest bail application filed by the applicant-accused.

I have heard both the sides at length and also perused the record of the Learned Trial Court and the Case Diary produced

by Learned P.P. It appears that on the basis of an FIR laid by one Nagadhiraj Datta on 09.06.2025 to O/C, East Agartala PS this present case has been registered against the present applicant-accused and others. In this case, the prosecution was set into motion on the basis of an FIR laid by one Nagadhiraj Datta to O/C, East Agartala alleging inter alia that on 08.06.2025 the present applicant-accused posted a video on his facebook profile vide URL No.<http://www/facebook.com/share/V/150dzZjN4T> and when he followed the said facebook profile that time it came to his knowledge that the accused made derogatory statement against the Chief Minister of the State and questioned the Government of India as to why Present Chief Minister was appointed as Chief Minister of the State and for the said reason the accused declared war against the State Government and the Central Government and tried to instigate religious and communal dispute and made provocative speech. After that, in the evening at about 0800 pm he along with 4/5 persons found the accused 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 upon 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 also 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 the FIR was laid. Accordingly, on the basis

of FIR the present case was registered against the present accused and others.

It is the admitted position that in course of investigation, the IO caused arrest of the brother and father of the accused and forwarded before the Court and later on they were produced before the concerned Jurisdictional Court and they were granted bail and challenging that order of bail, the prosecution sought for cancellation of bail granted to them and by order dated 15.09.2025 this Court dismissed the bail granted to the brother and father of the accused in connection with B.A. No.58 of 2025 which is now subjudiced before the Hon'ble Supreme Court and the Hon'ble Supreme Court has been pleased to stay the operation of the said judgment/order. Here in the case at hand, the present applicant-accused has sought for pre-arrest bail.

I have also perused the record of the Learned Trial Court and it appears that by order dated 17.07.2025 warrant of arrest has been issued against the present applicant-accused and by subsequent order dated 22.10.2025, proclamation has been issued against the applicant-accused.

I have also gone through the citations referred by Learned Counsel for the applicant-accused and the prosecution and also the statement of the witnesses so far collected by IO upto this stage of investigation including the injury report of the victim. Also I have gone through the order dated 04.09.2025 passed by Learned Addl. Sessions Judge, Court No.2, West Tripura, Agartala in connection with B.A. No.112 of 2025. The case is still pending for investigation. At this stage, no observation

can be given as to what would be the ultimate fate of the case on conclusion of trial if the case is ended in charge-sheet.

However, considering the materials on record and also the facts and circumstances of the case it appears to this Court that since the warrant and proclamation had been issued against the present applicant-accused by the Learned Jurisdictional Court but till today he did not surrender before the Learned Trial Court, so, in view of the principle of law laid down by the Hon'ble Apex Court as referred above and also as referred by Learned P.P. appearing on behalf of the prosecution in the aforementioned cases, at this stage I do not find any scope to grant the concession of pre-arrest bail to the applicant-accused. Accordingly, the pre-arrest bail application filed by the applicant-accused stands rejected being devoid of merit. The accused is to surrender before the Learned Trial Court and to cooperate with the investigation.

With this observation, this present anticipatory bail application stands disposed of being not maintainable as per law.

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

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

**JUDGE**