

**HIGH COURT OF TRIPURA
A G A R T A L A**

B.A. No.49 of 2026

Saikat Talapatra,

S/O Lt. Ranjit Talapatra, resident of A.D. Nagar, Road No.6, P.S. A.D. Nagar,
Agartala, West Tripura, PIN 799001.

..... **Applicant(s)**

- V e r s u s -

The State of Tripura

Represented by the Ld. Public Prosecutor, Hon'ble High Court of Tripura.

..... **Respondent(s)**

For the Applicant(s)	:	Mr. P. Roy Barman, Senior Advocate. Mr. K. Nath, Advocate. Mr. S. Bhattacharjee, Advocate.
For the Respondent(s)	:	Mr. Siddharth Dave, Senior Advocate. Mr. Raju Datta, P.P.
Date of hearing	:	16th March, 2026.
Date of delivery of Judgment & Order	:	23rd March, 2026.

Whether fit for reporting :

YES	NO
√	

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

This is an application filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short BNSS) for granting bail to the applicant Saikat Talapatra in connection with West Agartala P.S. case No.190 of 2023 registered under Sections 153A/354A/504/505/509 of the Indian Penal Code, 1860, Section 67 of the Information Technology Act, 2000 and Sections 3(1)(r)/3(1)(u)/3(1)(w)(ii)/3(2)(va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

[2] One Shri Pradyut Kishore Manikya Debbarma lodged the written FIR in the police station on 14.10.2023 under the caption 'Subject-information about provocation through social media with the object to promote enmity between various communities in Tripura and insult and humiliation to member

of S.T. Community and S.T. women'. Details of contents of the FIR being not much relevant here are not described further.

[3] After registration of the FIR, police investigated the case and arrested the accused person on 20.10.2023 and laid charge-sheet under Sections 153A/354A/504/505/509 IPC, Section 67 of the IT Act, 2000 and Sections 3(1)(r)/3(1)(u)/3(1)(w)(ii)/3(2)(va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

[4] Charge in this case were framed against the accused person under Sections 153A/153B/294/354A(iv)/354B/504/505/509 of Indian Penal Code, Section 67 of the Information Technology Act and Sections 3(1)(r)/3(1)(s)/3(1)(u)/3(1)(w)(ii)/3(2)(va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Atrocities Act, 1989). Recording of evidence of prosecution witnesses were also completed earlier. After the accused person has also been examined under Section 313(1)(b) of the Cr.P.C. (corresponding to Section 351 (1)(b) of BNSS), the accused examined himself as DW-1 on 20.02.2026.

[5] Learned Special Judge heard final argument from the side of prosecution on 23.02.2026, 24.02.2026 and on 25.02.2026. On the request of learned defence counsel, the Special Court fixed the next date on 02.03.2026 for final argument from the side of defence. On that day, Mr. P. Roy Barman, learned senior counsel sought adjournment on the ground that he was not prepared for such argument and accordingly, next date was fixed on 05.03.2026. On that day, like other previous dates bail application was also filed on behalf of the accused and it was submitted from the side of defence that first of all the bail application should be decided and thereafter, learned senior counsel would argue in the case. Date was thereafter deferred fixing the next date on 06.03.2026 for hearing on the bail application and on that day, said bail application was rejected and the next date for the purpose of argument from the side of defence was fixed on 10.03.2023. On 10.03.2026, the regular presiding officer was absent and therefore, the date was deferred to 16.03.2026 for the purpose and meanwhile, the present bail application has been filed before this Court.

[6] Mr. P. Roy Barman, learned senior counsel for the accused petitioner submits that the prescribed punishment for all the offences as charged for, except Section 354B of Indian Penal Code is imprisonment for five years or below the same, and as the accused petitioner is first time offender and as per Section 479 of BNSS, the accused is entitled to get bail after he has suffered incarceration for one-third of the maximum period of prescribed imprisonment. Learned senior counsel also submits that there is no prima facie material came out in the evidence to attract Section 354B IPC, and therefore, learned Special Judge has committed error by rejecting the bail application of the petitioner vide order dated 06.03.2026. Learned senior counsel stressed upon the general principle that bail is the rule and rejection is exception and detention cannot be punitive unless one person is held guilty of committing a offence.

[7] Mr. Roy Barman, learned senior counsel further submits that the accused is in custody for more than two years and five months and suffering incarceration due to State vendetta. Finally, learned senior counsel contends that bail is required for the accused person as he intends to discuss and brief his advocate for preparing for the final argument. Mr. Roy Barman, learned senior counsel also submits that recording of evidence of witnesses were completed long ago and therefore, there is no necessity for further detention of the accused person as there is no further scope for the accused person to influence any witness. Mr. Roy Barman, learned senior counsel, therefore, prays for bail of the accused petitioner on any condition.

[8] Mr. Siddharth Dave, learned senior counsel assisted by Mr. Raju Datta, learned P.P. on behalf of the respondent submits that the present accused person is in custody in connection with at least ten number of cases and therefore, even if he is released on bail in this case, he will not be able to come out from the prison, and hence, the ground of bail as raised from the side of accused person that he is required to discuss with his learned counsel coming out from the prison is meaningless. Learned senior counsel also challenges the maintainability of the bail application referring to Section 14-A(2) of the Atrocities Act, 1989 arguing that after being aggrieved by a decision of the learned Special Judge while granting or refusing bail, the proper forum is to file an appeal before the High Court and therefore, bail application under Section 439 Cr.P.C (corresponding to Section 483 BNSS) is

not maintainable. Learned senior counsel also submits that the Atrocities Act, 1989 envisages for speedy trial and therefore, it would be better approach for the accused to participate in final hearing of the case and to get the matter disposed of at the earliest.

[9] Mr. Dave, learned senior counsel also submits that when date was fixed for hearing of final argument from the side accused person, they themselves sought adjournment causing further delay in the final disposal of the matter and therefore, urging for bail on the ground that for a long period the accused is in custody is also not acceptable. Learned senior counsel also refers to the provision of Section 533 of BNSS and submits that the prescribed procedure of the trial will be guided by the relevant Section of the Code of Criminal Procedure as the trial commenced prior to the BNSS came into force and as such the contention of the petitioner that he has already undergone imprisonment of one third of the prescribe punishment is also not tenable.

[10] In reply, Mr. Roy Barman, learned senior counsel, however, submits that the charge in the case was framed after the BNSS came into force and therefore, trial commenced thereafter. Mr. Roy Barman, learned senior counsel further replied that this is a matter touching the personal liberty of the accused person and therefore, the technicalities of filing appeal under Section 14 of the Atrocities Act may be ignored. Learned senior counsel also contends that the High Court has power under Section 439 Cr.P.C/ Section 483 BNSS and Section 528 of BNSS to consider the bail prayer of the accused person.

[11] Before advertng to other points as raised from both the sides, the issue of maintainability of the bail application as raised by Mr. Dave, learned senior counsel is required to be examined first. Mr. Dave refers to the provision of Section 14-A of the Atrocities Act, 1989 which reads thus:

“14-A. Appeals.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of Section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.”

Said provision was inserted by Act. No.1 of 2016 with effect from 26.01.2016.

[12] The provision of sub-section (2) envisages that an appeal against an order granting or refusing bail by the Special Court shall lie to the High Court. In other words, such order of granting or refusing bail is an appealable order under this Act. The non-obstante clause mentioned therein further indicates that no leave of the Court is required for filing the appeal. Now, therefore, next question which naturally follows thereafter is whether despite having a statutory forum available for preferring an appeal against the refusal of Special Judge to grant bail, a petition under Section 439 of Cr.P.C. or under Section 483 of BNSS, 2023, as the case may be, shall lie before the High Court and whether the High Court can simultaneously exercise both the appellate jurisdiction as well as original or concurrent jurisdiction in the same subject matter. The matter is no longer *res-integra* now.

[13] Earlier, an identical question arose for decision before the Hon'ble Supreme Court in **State of Gujarat v. Salimbhai Abdulgaffar Shaikh and others, (2003) 8 SCC 50**. In that case, FIR was lodged under different provisions of Indian Penal Code (for short-IPC), Indian Railways Act, the Prevention of Damage to Public Property Act and Section 135(1) of the Bombay Police Act. After investigation charge-sheet was also submitted against the accused person(s) involved in that case with mentioning that investigation was still continuing. The respondents moved bail application before learned Addl. Sessions Judge and then to the High Court under section 439, Cr.P.C. On the basis of further investigation, the prosecution came with the allegation that offences under Sections 3(2) and (3) and Section 4 of the Prevention of Terrorism Act, 2002 (for short-POTA) were also committed. The

pari materia provision of sub-section (2) of Section 14-A also finds place in provision of Section 34 of POTA in sub-section (4). Said provisions of Section 34 is as under:

“34. Appeal- (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

Explanation.-For the purposes of this section, "High Court" means a High Court within whose jurisdiction, a Special Court which passed the judgment, sentence or order, is situated.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or / refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.”

[14] After examining the provision of Section 34 *ibid*, Hon’ble Supreme Court at paragraph No.14 observed that a person whose bail application under POTA had been rejected by the Special Court could not have two remedies and he could not avail any one of these two at his sweet will. The interpretation that he may move a bail application before the High Court under Section 439 Cr.P.C. in the original jurisdiction which will be heard by a Single Judge and may prefer an appeal which will be heard by a Bench of two Judges, would be incongruous and therefore fallacious. It was also held in said case that the order of the High Court exercising power under Section 439 Cr.P.C. read with Section 482 Cr.P.C. granting bail was clearly without jurisdiction as under the scheme of the Act the accused could only file an appeal against an order of refusal of bail passed by the Special Court.

[15] Thereafter, similar issue again came for consideration before the Hon’ble Supreme Court in case of ***State of Andhra Pradesh through Inspector General, National Investigation Agency vs. Mohd. Hussain alias Saleem, (2014) 1 SCC 258***. The relevant penal provisions involved in

said case as alleged were different provision of IPC (including section 302 IPC), Sections 3 to 6 of the Explosive Substances Act, 1908, Sections 3,5 and 25 of the Arms Act, Section 15-18,20 and 23 of the Unlawful Activities (Prevention) Act, 1967 and Sections 3(1)(i) & (ii), 3(2) & 3(4) & 3(5) of the Maharashtra Control of Organised Crime Act, 1999 (the MCOC Act). The National Investigation Agency conducted the investigation in exercise of power under Section 6(5) of the National Investigation Agency Act, 2008. The applicant in custody preferred an application for bail before Ld. Single Judge in the High Court under Section 21(4) of MCOC Act read with Section 439, Cr.P.C.

[16] The provision of Section 6 of NIA Act, 2008 empowers the Central Government to direct the National Investigation Agency to investigate any offence in relation to the Acts or certain provisions of the Act(s) as mentioned in the Schedule of the Act. The Unlawful Activities (Prevention) Act, 1967 is also enlisted in said Schedule. Section 21 of the NIA Act, 2008 also contains similar provision like Section 14-A of the Atrocities Act, 1989. Sub-section (2) of Section 21 of the Act prescribes that every appeal under sub-section (1) which allows the scope of filing of appeal against any judgment, sentence or order, not being an interlocutory order, shall be heard by a Bench of two Judges of the High Court and sub-section (4) provides that notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail. In that contexts, it was argued from the side of respondents that the bail application which the applicant had filed before the High Court was one under Section 21(4) of the MCOC Act read with Section 439, Cr.P.C. was maintainable before a Single Judge. Finally, Hon'ble Supreme Court held as under:

“27.1. Firstly, an appeal from an order of the Special Court under the NIA Act, refusing or granting bail shall lie only to a Bench of two Judges of the High Court.

27.2. And, secondly, as far as Prayer (b) of the petition for clarification is concerned, it is made clear that inasmuch as the applicant is being prosecuted for the offences under the MCOC Act, 1999, as well as the Unlawful Activities (Prevention) Act, 1967, such offences are triable only by the Special Court, and therefore application for bail in such matters will have to be made before the Special Court under the NIA Act, 2008, and shall not lie before the High Court either under Section 439 or under Section 482 of the Code. The application for bail filed by the applicant in the present case is not maintainable before the High Court.

27.3. Thus, where the NIA Act applies, the original application for bail shall lie only before the Special Court, and appeal against the orders therein shall lie only to a Bench of two Judges of the High Court.”

The decision in ***State of Gujarat v. Salimbhai Abdulgaffar Shaikh and others (supra)*** was also referred in this decision.

[17] In respect of the cases involving the offences under the Atrocities Act, 1989 along with offences committed under Indian Penal Code, the Allahabad High Court in the case of ***Chandra Raj @ Chandra vs. State of U.P. Thru. Prin. Secy. Home Lko. (Criminal Misc. Bail Application No.8192 of 2024) decided on 28.08.2024*** and the Madhya Pradesh High Court in the case of ***Neeraj vs. State of Madhya Pradesh and another (Criminal Appeal No.1502 of 2023) decided on 05.04.2023*** have held that in view of Section 14-A(2) of the Act a petition under Section 439 Cr.P.C. is not maintainable in the High Court.

[18] In view of above, it requires no further discussion that the present bail application filed under Section 483 of BNSS is not maintainable. Therefore, all other points as raised from both the sides become inapposite for examination.

In view of above, the bail application is rejected being not maintainable and is accordingly, disposed of.

Return the Trial Court record with copy of this order forthwith.

Pending application(s), if any, shall also stand disposed of.

JUDGE