

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.M.App.No.01 of 2025

Shri Dipak Das,
S/O Late Krishna Das,
Resident of S. K. Para, Kulai,
P.S.- Ambassa, District- Dhalai.

....Appellant(s).

Versus

1. The State of Tripura represented by Secretary,

Home Department, Government of Tripura,
New Capital Complex,
Secretariat Buildings, Kunjaban,
Gurkhabasti, Agartala, Tripura West- 799010.

2. District Magistrate & Collector,

D. M. Complex, Jawaharnagar, Ambassa,
Dhalai Tripura- 799289.

3. Sub Divisional Magistrate,

Dhalai District, Office of Sub Divisional Magistrate,
Ganda Twisa, Dhalai, Tripura- 799284.

.....Respondent(s).

For Appellant(s)	:	Mr. Agniva Chakraborty, Adv.
For Respondent(s)	:	Mr. Rajib Saha, Addl. P.P.
Date of Hearing	:	08.01.2026
Date of delivery of Judgment and Order	:	16.01.2026
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Learned Counsel, Mr. A. Chakraborty
appearing on behalf of the petitioner-appellant and also heard

Learned Additional P.P., Mr. R. Saha appearing on behalf of the State-respondent.

02. This appeal is preferred by the appellant challenging the order dated 24.11.2023 passed by Learned Special Judge, NDPS, Dhalai District Ambassa in connection with case No.ABS GRPS 10 of 2023(Special NDPS 04 of 2024) and connecting orders dated 28.11.2023, 05.01.2024, 02.01.2024, 01.03.2024, 05.04.2024, 26.07.2024, 29.08.2024, 03.10.2024, 27.11.2024, 04.12.2024, 20.02.2025 & 20.03.2025 passed in connection with case No.Crl.Misc.65 of 2023 under Section 446 of Cr.P.C. arising out of the said ABS PS case No.ABS GRPS 10 of 2023(NDPS) passed by Learned Sessions Judge, Dhalai District, Ambassa.

03. At the time of hearing, Learned Counsel for the appellant, Mr. A. Chakraborty drawn the attention of this Court that in pursuance of the order dated 12.10.2023 passed by Learned Special Judge, NDPS, Ambassa in connection with 2023 GRP 10 (NDPS), the accused persons namely, Mithu Kumar, Amit Kumar, Nikhil Kumar & Bibhishan Kumar were granted interim bail by the Learned Special Judge and accordingly, on 13.10.2023 the present petitioner-appellant stood as bailor/surety on behalf of the said accused persons for an amount of Rs.1,00,000/- each and the accused persons were supposed to appear before the Court of Learned Special

Judge, NDPS, Ambassa on 24.11.2023 but on that day the accused persons did not surrender, as a result of which Learned Special Judge issued warrant of arrest against all the accused persons and passed an order for drawing up of separate proceeding under Section 446 of Cr.P.C. against the petitioner-appellant and accordingly, a separate proceeding was drawn up and in the separate proceeding under Section 446 of Cr.P.C., Learned Sessions Judge issued Distress warrant of arrest against the present petitioner-appellant and communicated the same to the Collector of the District and in pursuance of the order of the Court, the SDM, Ambassa initiated recovery proceeding under Section 421 of Cr.P.C. and accordingly, the property of the present appellant was attached and order was passed for recovery of the defaulted amount by selling the immovable property belonging to the appellant. It is further submitted that auction was conducted by SDM, Ambassa and after that as per order dated 28.03.2025, the sale which was confirmed in auction was stayed by an order of this Court. Learned Counsel further submitted that by this time one of the accused has been expired and other accused persons were surrendered before the Court and they are released on fresh bail and now the case is pending for disposal before the Court of Learned Special Judge. So, finally Learned Counsel submitted that considering the facts and circumstances of the case, the proceeding under Section 446 of

Cr.P.C. drawn up against the petitioner-appellant may be closed.

04. On the other hand, Learned Additional P.P., Mr. R. Saha appearing on behalf of the State-respondent submitted that although interim bail was granted to the accused persons till **24.11.2023** but on the day, the present petitioner-appellant failed to produce the accused persons before the Court nor took any step. So, Learned Trial Court rightly drawn up proceeding against the surety and even in the proceeding drawn up under Section 446 of Cr.P.C. inspite of receipt of notice, no step was taken by the surety, i.e. the present petitioner-appellant. So, it shows that his conduct was not at all satisfactory and he stood as a bailor for the accused persons in a case of heinous offence and urged for dismissal of this appeal.

05. Initially, the present appellant challenging the proceeding under Section 446 of Cr.P.C. preferred one Revision petition before this Court but later on after hearing both the sides, the writ petition was converted in to appeal under Section 449 of Cr.P.C. The present petitioner-appellant stood as bailor for an amount of Rs.1,00,000/- each for four accused persons, thus, he defaulted in paying forfeited bail amount of Rs.4,00,000/-. However, in the meantime, one of the accused reportedly has been expired namely, Bibhisan Kumar and other accused persons are available before the Court namely, Mithu Kumar, Amit Kumar and Nikhil Kumar. From the records of the

Learned Trial Court, further, it appears that as per order of the Learned Trial Court the property of the present petitioner-appellant was attached and put under auction and one purchaser has deposited the earnest money and SDM, Ambassa, Dhalai, accepted the bid of one Biplab Dey and asked to deposit a sum of Rs.4,05,000/-towards the sale of the auction property belonging to the present petitioner-appellant and at that time on the approach of the appellant, as per order of the Court, further proceeding regarding auction and sale was stayed. It is not disputed that the present appellant stood as bailor for all the accused persons by executing surety bond on 13.10.2023 but he failed to produce the accused persons before the Learned Trial Court on 24.11.2023 nor submitted any prayer before the Court on that day. Even inspite of receipt of notice in the proceeding drawn up under Section 446 of Cr.P.C., he did not take any step before the Court nor produced the accused person before the Court for which the Learned Trial Court rightly drawn up proceeding against him under Section 446 of Cr.P.C. The conduct of the appellant was not at all satisfactory. Thus, he has defaulted in discharging his legal duties. However, at the time of hearing, Learned Counsel for the petitioner-appellant submitted that no notice was served upon him but in this regard no satisfactory reply could be offered by Learned Counsel by showing any documentary evidence on record that no notice was served upon him and excepting this plea, Learned Counsel could not take any other

plea to substantiate his claim against the proceeding drawn up by the Learned Trial Court. He also submitted that the present petitioner-appellant is a very poor person suffering from physical disability and in support of his contention one certificate was submitted by him issued by the District Disability Board but simply on the basis of the plea taken by the appellant that he is suffering from disability cannot be a ground for exonerate him from the liability of payment of forfeited bail bond. From the records of the Learned Trial Court, it is very much clear that the petitioner-appellant failed to produce the accused persons before the Court on the date fixed, even later on also he failed to produce the accused persons before the Court for which the Court had to issue warrant of arrest against all the accused persons. Even inspite of receipt of notice he did not take any step before the Learned Trial Court to exonerate him from the liability of the bail bond nor any petition was filed on his behalf to substantiate the Court that he was not in a position to produce the accused persons before the Court. So, simply on the ground that he is suffering from disability and he is a person having no sufficient means cannot be a sole ground for discharging him from the liability of the bail bonds for which he stood as bailor. At the same time, it is also true that if the property which has been attached is transferred to the auction purchaser, in that case he will be landless and it will be a severe hardship for the present petitioner-appellant since by this time the accused

persons who are alive were produced/surrendered before the Learned Trial Court and were released on fresh bail bond. So, considering the facts and circumstances of the case, it appears to this Court that the surety of this case has defaulted in discharging his legal obligation to produce the accused persons for whom he stood as bailor before the Learned Trial Court on the date fixed nor he took any sincere steps to draw the attention of the Court for taking lenient view in this regard.

06. So, considering the facts and circumstances of the case, I do not find any merit in the appeal filed by the present petitioner-appellant and the same is liable to be dismissed.

In the result, the appeal filed by the petitioner-appellant is hereby dismissed on contest being devoid of merit. The petitioner-appellant is asked to deposit forfeited bail amount of Rs.1,50,000/- out of Rs.4,00,000/- to the Learned Trial Court within a period of one month from the date of passing of this order and the balance amount is hereby remitted under Section 446(3) of Cr.P.C. In the event of deposit of forfeited bail amount of Rs.1,50,000/- the same will be deposited to the treasury by challan by the Learned Trial Court and the proceeding drawn up against this surety regarding this case shall be stand as closed. Further, it is also ordered that after receipt of the money, Learned Trial Court shall ask SDM, Ambassa to close the proceeding drawn up against the appellant-surety and to refund the earnest money to the auction purchaser namely, Sri Biblap Dey, S/o Nepal

Chandra Dey, Nabagram (Basudeb Para), Kulai, Dhalai District and the property belonging to the petitioner-appellant which was attached be released in this favour along with the possession, if so requires.

With this observation, this appeal stands disposed of on contest.

A copy of this judgment/order be supplied to Learned Counsel for the appellant for information and compliance. A copy of this judgment/order be communicated to Learned Trial Court for information and compliance and also a copy be supplied to SDM, Ambassa for information.

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

JUDGE



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