

**HIGH COURT OF TRIPURA
AGARTALA
B.A. No.63 of 2026**

Smt. Gauri Saha,
W/O- Lt. Nihar Ranjan Saha,
R/O- Durgapur, Gandachara,
ICDS Center, P.O.- Sarma,
P.S.- Gandacherra, Dist.- Dhalai Tripura,
PIN-799284.

.... Applicant

On behalf of-

1.

Sri Dipak Chandra Saha,
S/O- Lt. Nakul Chandra Saha,
R/O- Durgapur,
Gandacherra, P.S.- Gandacherra,
Dist.- Dhalai Tripura,
PIN-799284.
2.

Smt. Debika Saha,
W/O- Sri Dipak Chandra Saha,
R/O- Durgapur, Gandacherra,
P.S.- Gandacherra, Dist.- Dhalai Tripura,
PIN- 799284.

.... Accused Persons

Versus

The State of Tripura

.....Respondent

For Applicant(s)	:	Mr. Ratan Datta, Adv. Mr. Ankan Tilak Paul, Adv. Mr. Aditya Baidya, Adv.
For Respondent(s)	:	Mr. Sankar Lodh, Spl. P.P.
Date of Hearing	:	08.04.2026
Date of delivery of Judgment and Order	:	13.04.2026
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This bail application under Section 483 of BNSS is filed
on behalf of the accused persons-in-custody namely, Sri Dipak

Chandra Saha and Smt. Debika Saha for releasing them on bail in connection with ST(T-1) No.96/2025 arising out of NCC P.S. Case-2025/NCC/032 registered under Sections 140(1)/3(5)/103(1)/238(b)/61(2)(a) of BNS, 2023 now pending before the Court of Learned Addl. Sessions Judge, Court No.02, West Tripura, Agartala.

2. Heard Learned Counsel, Mr. Ratan Datta appearing on behalf of the accused persons-in-custody and also heard Learned Special P.P., Mr. Sankar Lodh appearing on behalf of the State-respondent.

3. Taking part in the hearing, Learned Counsel for the accused persons-in-custody drawn the attention of the Court that initially on behalf of the said accused persons-in-custody a bail application was moved to this Court and this Court by order dated 03.11.2025 rejected bail application of the said accused persons. By this time some situation has been changed and due to the changed circumstances this bail application is again moved by the accused persons.

4. Learned Counsel, Mr. R. Datta appearing for the accused persons-in-custody thereafter drawn the attention of the Court referring the contents of the FIR and submitted that these accused persons-in-custody are not FIR named. Although during investigation their names were revealed and they were taken into custody and finally the I/O laid charge-sheet against them along with others.

5. Learned Counsel, Mr. R. Datta for the accused persons-in-custody at this stage further drawn the attention of the Court

the relevant paras of the chage-sheet which were revealed in course of investigation. The relevant paras of the charge-sheet are quoted herein below:-

"From the disclosure statement of a/p Nabanita Das it has revealed out that she has a love relation with a/p Dibakar Saha and after completion of MBBS from Bangladesh Dibakar started living at Agartala. After death of his uncle namely Lt. Ripak Saha Dibakar started living in his uncle's (father of Souramita) house at Bankumari and during living their house a doubt had been arises between their brother-sister relationships (Souramita & Dibakar). Once she has come to know as stated by Dibakar that Souramita has a love affair with a Muslim Boy namely Sarifull Hosan (now deceased) and Dibakar told them to break up their (Souramita & Sarifull) love relation otherwise their family reputation will be damage but every time both of deny his proposal then Dibakar planned to eliminate Sarifull Hosan at anyhow. Few days ago before the incident a/p Nabanita purchased one black colour trolley bag (which is used concealing the dead body) by a/p Dibakar Saha and kept it in the house room of Joydeep Das. On 08.06.2025 a/p Dibakar informed her that Sarifull will come at Indranagar, in the house of Joydeep Das evening time. Accordingly a/p Nabanita come to house of Joydeep evening at about 1800 hrs. Consequently on 08.06.2025 a/p Dibakar and Nabanita waiting for Sarifull Hosan house galli road of a/p Joydeep Das and then at about 2100 hrs Sarifull came at Indranagar Kabarkhala with a motor cycle (TR01AH8866) and then they received Sarifull Hosan and took him in the house of a/p Joydeep Das.

On 09.06.2025 early morning the FIR named A/P Dibakar Saha shifted the trolley bag containing the body of the deceased Sarifull Hosan from the house of Joydeep Das to the rented house of Smt. Moushami Das sister of the FIR named A/P Nabanita Das at East Dhaleswar, Chandrapur. A/P Nabanita was shared the contact number of her sister with a/p Dibakar. Thereafter on the same day morning at about 0930hrs FIR named A/P Nabanita came and left the said gray colour pitto bag to her sister's rented house of Smt Moushami Das. Then the FIR named A/P Nabanita Das & Dibakar Saha communicated (messages/called) with the parents of the FIR named A/P Dibakar Saha, namely a/p Dipak Ch Saha and a/p Debika Saha and aware them about the incident (murder of Sarifull Hosan), shared her sister's contact number(Mousami Das) with parents of Dibakar Saha and directed them for collected the dead body containing trolley bag of deceased Sarifull Hosan from the rented house of Smt Mousami Das sister of the FIR Named A/P

Nabanita Das located at East Dhaleswar, Chandrapur and also told them to disposed the dead body of Sarifull Hosan at anywhere in Gandacherra.

On 08.06.25 a/p Dibakar Saha told a/p Joydeep Das to arranged some jeam boy in his friend circle to punished Sarifull Hosan as many of time he warned Sarifull to break up love relation with his sister Souramita but every time he deny. Then he called a/p Animesh and as per their plan on 08.06.2025 evening they all (a/p Dibakar, Nabanita, Animesh & Dibakar) gathered in the house of a/p Joydeep Das and a/p Dibakar called Sarifull Hosan for come in the house of a/p Joydeep. Consequently on 08.06.2025 a/p Dibakar and Nabanita waiting for Sarifull Hosan house galli road of a/p Joydeep Das and then at about 2100hrs Sarifull came at Indranagar Kabarkhala with a motor cycle (TRO1AH8866) and then they received Sarifull Hosan and took him in the house of a/p Joydeep Das. After entered into the room of Joydeep Das a/p Nabanita locked the door and a/p Dibakar caught hold him neck with his arm from the backside of Sarifull and in few moment Sarifull put out his tung then Dibakar dropped him on the floor and strangulated him by his foot then a/p Animesh Yadav & Joydeep Das was sitting on top his chest and caught hold his hand/legs. After that a/p Nabanita taken out one brown colour cellotape rool and strapped Sarifull's face/hands and a/p Joydeep & Animesh strapped Sarifull's legs by the said cellotape. Then a/p Dibakar tied his (Sarifull) hand/legs with a green colour plastic rope and put him into a black colour large trolley bag and sealed the chain by cellotape. Then they collect the mobile phone of Sarifull Hosan, one pair Sandals white colour, eye-glass, cellotape roll which approx half of used, one transparent glass container containing with some white powder substances and put this articles into a gray colour pitto bag of a/p Dibakar Saha. Then a/p Dibakar handed over bike key of Sarifull Hosan and the said pitto bag and told her to destroy it. Thereafter they all left the dead body filled trolley bag in the house of Joydeep Das and then a/p Dibakar Saha booked a auto rickshaw through Uber app from his mobile number and they all (A/P Dibakar, Nabanita, Joydeep & Animesh) left out from there for Chandrapur by the said auto rickshaw. From Chandrapur they all separated A/P Nabanita Went to her house at Jamtala with the said pitto bag where mobile phone of Sarifull Hosan was kept into this Pitto bag, a/p Joydeep & Animesh went to rented house of a/p Animesh Yadav at Khayerpur and a/p Dibakar Saha went to his residing house located at Bankumari.

From the disclosure statement of a/p Dipak Ch Saha it has revealed out that on 09.06.2025 morning he has received an information from Indranagar through his mobile phone that his only

son a/p Dibakar Saha was involved with missing of a person of that area. Accordingly he along with his wife & father in law left for Agartala with one vehicle bearing registration number TR04D0536 (EECO) and when they reached at Udaipur then a/p Dipak Ch Saha & his wife received an message from his son's lover namely a/p Nabanita Das. Nabanita shared a contact number and directed them to collect a trolley bag with contact that number and she also directed them to delete the message. Accordingly 09.06.2025 they arrived at Chandrapur Agartala and collected one large size trolley bag and one pitto bag from the house of Smt Mousami Das. Then he has a doubt of this trolley bag as it was heavy weight after that keeping in the said vehicle pushed it from outside of this bag and then they confirmed that one dead body was inside this bag. As his father in law was inside the car so they did not discussed about the matter and after left him at Bhattapukur Agartala they shifted the dead body containing trolley bag & the said pitto bag at Narayanpur, Gandacherra in his shop and concealed the trolley bag in a deep refrigerator/freezer. Disclosure statement of a/p Debika Saha is also same with a/p Dipak Ch. Saha as she told."

Referring the observations of the I/O in the charge-sheet, Learned Counsel for the accused persons-in-custody drawn the attention of the Court that there is no direct evidence against the accused persons-in-custody showing their involvement in murder of the deceased rather on the following day of the incident they came when according to prosecution both the accused persons carried the bag containing the dead body of the deceased.

6. It was further submitted that, even for arguments sake, if it is established that the allegation of the prosecution against accused persons is true. In that case also there are no materials on record that the accused persons committed murder of the deceased rather from the allegation of the prosecution it is crystal clear that the accused persons-in-custody had committed offence which is bailable in nature and as such they are liable to be released on bail in any condition. In this regard, Learned

Counsel drawn the attention of the Court the provision of Section 238(a) of BNS which provides as under:-

"238. Causing disappearance of evidence of offence, or giving false information to screen offender.- Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false shall,-

(a) if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Referring the aforesaid provision, Learned Counsel for the accused persons-in-custody submitted that since the alleged prosecution allegation discloses commission of bailable offence against the accused persons-in-custody and they are lodging in custody more than 10 (ten) months, so considering the long incarceration of the accused persons-in-custody they may be released on bail in any condition.

7. It was further submitted by Learned Counsel for the accused persons-in-custody that prosecution may oppose the bail application referring Section 3(5) of BNS but on perusal of the relevant prosecution papers there would be no material showing implication of the accused persons-in-custody with the said offence. In support of his contention, Learned Counsel referred few citations.

8. It was further submitted by Learned Counsel appearing for the accused persons-in-custody that even if it is found that the disclosure statement was admissible and believable still there was

no scope to detain the accused persons furthermore in judicial custody. In this regard, reference was placed upon one judgment of this Court of India in ***Mintur Rahaman Vs. State of Tripura*** reported in **(2024) 2 TLR 359** wherein in Para Nos.33, 34 and 37, this High Court observed as under:-

"33. Learned Senior Counsel further submitted that the witness of the prosecution in course of their examination deposed before the Court that the deceased expired due to electrocution. The prosecution did not take any step for declaring those witnesses as hostile. In this regard, Learned Senior Counsel has also relied on a citation of the Hon'ble Supreme Court in Javed Masood and Another versus State of Rajasthan reported in 2010 AIR SCW 1656 which reads as under:

"13. In the present case the prosecution never declared PWs 6, 18, 29 and 30 "hostile". Their evidence did not support the prosecution. Instead, it supported the defence. There is nothing in law that precludes the defence to rely on their evidence. This court in Mukhtiar Ahmed Ansari vs. State (NCT of Delhi) : (2005) 5 SCC 258 observed:

"30. A similar question came up for consideration before this Court in Raja Ram v. State of Rajasthan, (2005) 5 SCC 272. In that case, the evidence of the Doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The Doctor was not declared "hostile". The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the Doctor and it was binding on the prosecution.

14. The proposition of law stated in the said judgment is equally applicable to the facts in hand."

Referring the aforesaid citation, Learned Senior Counsel further submitted that since the material witnesses of the prosecution were not declared hostile by the prosecution who very specifically stated that the deceased expired due to electrocution. So, there is no scope to place any reliance on the prosecution story that the present appellant caused the murder of his wife by electric heater on the alleged date and time just relying on the alleged disclosure statement of the appellant.

34. Learned Senior Counsel also in course of hearing referred the provision of Sections 25 and 26 of the Evidence Act and submitted that if for argument sake the alleged statement of the accused appellant is treated as confessional statement under Section 25 and 26 of the Evidence Act, in that case the same also

cannot be taken into consideration as per law. In this regard, Learned Senior Counsel has relied upon another citation of Hon'ble Gauhati High Court in Kartik Chakraborty and Others versus State of Assam reported in (2018) 2 GLR 1 which reads as under :

"33. This has also been the view of the Madras High Court and it finds its expression in several decisions. In Palanisamy alias Kunjupaiyan Vs. State, Criminal Appeal No.541/2005, decided on 22.03.2013, Madras High Court has held that the Evidence Act was enacted before the commencement of the Code of Criminal Procedure, 1973. In view of Section 3(3) of the Code of Criminal Procedure, 1973, the term "Magistrate" referred to in Section 26 of the Evidence Act does not refer to Executive Magistrate. Consequently, the expression "Magistrate" as appearing in Section 26 of the Evidence Act would mean only a Judicial Magistrate. Therefore, confession recorded or videographed by police in the presence of Executive Magistrate would be hit by Sections 25 and 26 of the Evidence Act. Again, in the case of Kalam @ Abdul Kalam Vs. Inspector of Police, reported in MANU/TN/07588/2011, the Madras High Court examined the provisions of Section 26 of the Evidence Act vis-à-vis Section 3(3) of the Code of Criminal Procedure, 1973 and after observing that the Evidence Act was enacted before the commencement of the Code of Criminal Procedure, 1973, held that the term "Magistrate" as referred to in Section 26 of the Evidence Act will mean only a Judicial Magistrate."

Referring the above, Learned Senior Counsel submitted that the statement was recorded in presence of Executive Magistrate, not before any Judicial Magistrate as interpreted by the Hon'ble Gauhati High Court. So, there was also no scope to place any reliance upon the evidence of PW-1, Shri Santanu Dutta DCM in whose presence the disclosure statement was recorded by IO on the alleged date and time.

37. Here in the case at hand, the evidence on record of the prosecution is discussed in detail and we have already come to the conclusion that there is no evidence on record to sustain the charge against the appellant under Section 498A of IPC as because the prosecution by adducing evidence on record has failed to satisfy the Learned Court below that the deceased prior to her death was subjected to cruelty for unlawful demand of money by the present appellant. So, Learned Court below has rightly acquitted the present appellant from the charge under Section 498A of IPC. Now regarding the charge as leveled under Section 302 of IPC, it appears that all the witnesses very categorically stated that on the alleged day, the accident occurred due to electrocution resulting which the accident took place and the victim succumbed to death. The medical evidence also reveals that the victim died due to electrocution. Now, the witnesses who deposed that the deceased died due to electrocution were not

tendered for cross examination by the prosecution. There is also no evidence on record that the victim has/had strain relation with her deceased husband. No motive has been proved by the prosecution as to why the appellant committed the murder of his wife on the alleged day. Further, from the disclosure statement it also appears that the same also has not been proved in accordance with Section 27 of the Evidence Act as observed by the Hon'ble Apex Court in the judgment Ramanand alias Nandlal Bharti(supra). Prosecution also failed to prove that the alleged statement of the appellant as a confession as the same was not made before a Judicial Magistrate as required under law and the citations as relied upon by the appellant in Zwinglee Ariel (supra) also supports the case of the appellant in the case at hand."

9. Further reference was placed upon another citation of the Hon'ble Supreme Court of India in ***Chandrapal v. State of Chhattisgarh (Earlier Madhya Pradesh)*** reported in **(2023) 16 SCC 655**, wherein in para Nos.18, 19, 20, 21 and 28, Hon'ble the Apex Court observed as under:

"18. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession. However, this Court has consistently held that an extra-judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra-judicial confession. As held in *State of M.P. v. Paltan Mallah* [*State of M.P. v. Paltan Mallah*, (2005) 3 SCC 169 : 2005 SCC (Cri) 674] , the extra-judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra-judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra-judicial confession of the co-accused.

19. In *Sahadevan v. State of T.N.* [*Sahadevan v. State of T.N.*, (2012) 6 SCC 403 : (2012) 3 SCC (Cri) 146] , it was observed in para 14 as under : (SCC p. 410)

"14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does

not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.”

20. The said ratio was also reiterated and followed by this Court in Jagroop Singh v. State of Punjab [Jagroop Singh v. State of Punjab, (2012) 11 SCC 768 : (2013) 1 SCC (Cri) 1136] , Sk. Yusuf v. State of W.B. [Sk. Yusuf v. State of W.B., (2011) 11 SCC 754 : (2011) 3 SCC (Cri) 620] and Pancho v. State of Haryana [Pancho v. State of Haryana, (2011) 10 SCC 165 : (2012) 1 SCC (Cri) 223] , wherein it has been specifically laid down that the extra-judicial confession is a weak evidence by itself and it has to be examined by the court with greater care and caution. It should be truthful and should inspire confidence. An extra-judicial confession attains greater credibility and evidentiary value if it is supported by chain of cogent circumstances and is further corroborated by other prosecution evidence.

21. In the instant case it is true that the co-accused Videshi had allegedly made self-inculpatory extra-judicial confession before PW 4 Bhola Singh, and had made extra-judicial confession before the other witnesses i.e. PW 5 Chandrashekhar, PW 6 Baran Singh Thakur and PW 7 Dukaluram stating, inter alia, that the other three accused i.e. Bhagirathi, Chandrapal and Mangal Singh had committed the murder and he (i.e. Videshi) was asked to assist them in disposing of the dead bodies and concealing the evidence. However, the High Court, considering the inconsistency between the said two extra-judicial confessions made by the co-accused Videshi, did not find it safe to convict the other accused i.e. Bhagirathi, Mangal Singh and Videshi himself, and the High Court surprisingly considered the said extra-judicial confession made by Videshi as an incriminating circumstance against the appellant Chandrapal for convicting him for the offences charged against him. In our opinion if such weak piece of evidence of the co-accused Videshi was not duly proved or found trustworthy for holding the other co-accused guilty of committing murder of the deceased Brinda and Kanhaiya, the High Court could not have used the said evidence against the present appellant for the purpose of holding him guilty for the alleged offence.

28. Ergo, having regard to the totality of evidence on record, the Court is of the opinion that the High Court had committed gross error in convicting the appellant-accused for the alleged charge of Section 302 read with Section 34IPC, relying upon a very weak kind of evidence of extra-judicial confession allegedly made by the co-accused Videshi, and relying upon the theory of “last seen together” propounded by PW 1 Dhansingh. It is also significant to note that no evidence worth the name as to how and by whom the deceased Brinda was allegedly murdered was produced by the prosecution. Under the circumstances, it is required to be held that the prosecution had miserably failed to bring home the charges levelled against the appellant-accused beyond reasonable doubt. The suspicion howsoever strong cannot take place of proof.”

Referring the same, Learned Counsel appearing for the accused-persons submitted that in view of the observation of the

Hon'ble Supreme Court, there is no scope to the accused persons in judicial custody furthermore. Further extra judicial confession is a very weak piece of evidence, on the basis of that there is no scope to convict any person.

10. Learned Counsel, Mr. R. Datta thereafter referred another citation of the Hon'ble Supreme Court of India in ***Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence*** reported in **(2018) 8 SCC 271**, wherein in para No.10, Hon'ble the Apex Court observed as under:-

10. In *Kashmira Singh v. State of M.P.* [Kashmira Singh v. State of M.P., (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] , this Court relied upon the decision of the Privy Council in *Bhuboni Sahu v. R.* [Bhuboni Sahu v. R., 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] and laid down as under: (AIR p. 160, paras 8-10)

"8. Gurubachan's confession has played an important part in implicating the appellant, and the question at once arises, how far and in what way the confession of an accused person can be used against a co-accused? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in *Bhuboni Sahu v. R.* [Bhuboni Sahu v. R., 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] : (SCC OnLine PC)

'...It does not indeed come within the definition of "evidence" contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination.'

Their Lordships also point out that it is 'obviously evidence of a very weak type. ... It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities'.

They stated in addition that such a confession cannot be made the foundation of a conviction and can only be used in "support of other evidence". In view of these remarks, it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence? Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility because the Judge refuses to believe him except insofar as he is corroborated?

9. In our opinion, the matter was put succinctly by Sir Lawrence Jenkins in *Emperor v. Lalit Mohan Chuckerbutty* [Emperor v. Lalit Mohan Chuckerbutty, ILR (1911) 38 Cal 559 at p. 588.] where he said that such a confession can only be used to "lend assurance to other evidence against a co-accused "or, to put it in another way, as Reilly, J. did in *Periaswami Moopan, In re* [Periaswami Moopan, In re, 1930 SCC OnLine Mad 86 : ILR (1931) 54 Mad 75 at p. 77.] : (SCC OnLine Mad)

'...the provision goes no further than this—where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence.'

10. Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

11. Learned Counsel, Mr. R. Datta for the accused persons-in-custody referred another citation of the Hon'ble Supreme Court of India in ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.*** reported in **(2005) 2 SCC 42**, wherein in para Nos.18 and 19, Hon'ble the Apex Court observed as under:-

"18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a

change in the fact situation. In such cases if the circumstances then prevailing require that such persons be released on bail, in spite of his earlier applications being rejected, the courts can do so.

19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting."

Referring the same, Learned Counsel submitted that in view of the observation of the Hon'ble Supreme Court of India there is no scope to refuse the bail application filed on behalf of the accused persons-in-custody at this stage.

12. Lastly, Learned Counsel, Mr. R. Datta for the accused persons-in-custody relied upon another citation in **Ram Sharan Chaturvedi v. State of Madhya Pradesh** reported in **(2022) 16 SCC 166**, wherein in para Nos.27, 28, 29, 30, 31 and 32, Hon'ble the Apex Court observed as under:-

"27. The principal ingredient of the offence of criminal conspiracy under Section 120-BIPC is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. The court has to necessarily ascertain whether there was an agreement between the appellant and A-1 and A-2.

28. In the decision of **State of Kerala v. P. Sugathan** [State of Kerala v. P. Sugathan, (2000) 8 SCC 203 : 2000 SCC (Cri) 1474] , this Court noted that an agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation : (SCC pp. 211-12, paras 12-13)

"12. ... As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. ... *A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting*

the accused with the commission of the crime of criminal conspiracy....

13. ... The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient."

(emphasis supplied)

29. The charge of conspiracy alleged by the prosecution against the appellant must evidence explicit acts or conduct on his part, manifesting conscious and apparent concurrence of a common design with A-1 and A-2. In State (NCT of Delhi) v. Navjot Sandhu [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , this Court held : (SCC p. 691, para 101)

"101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution."

(emphasis supplied)

30. In accepting the story of the prosecution, the trial court, as well as the High Court, proceeded on the basis of mere suspicion against the appellant, which is precisely what this Court in Tanviben Pankajkumar Divetia v. State of Gujarat [Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156 : 1997 SCC (Cri) 1004] , had cautioned against : (SCC p. 185, para 45)

"45. The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that

conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. (Jaharlal Das v. State of Orissa [Jaharlal Das v. State of Orissa, (1991) 3 SCC 27 : 1991 SCC (Cri) 527])"
(emphasis in original and supplied)

31. It is not necessary that there must be a clear, categorical and express agreement between the accused. However, an implied agreement must manifest upon relying on principles established in the cases of circumstantial evidence. Accordingly, in the majority opinion of Ram Narayan Popli v. CBI [Ram Narayan Popli v. CBI, (2003) 3 SCC 641 : 2003 SCC (Cri) 869] , this Court had held : (SCC p. 783, para 354)

"354. ... For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient."

32. In view of the clear enunciation of law on the criminal conspiracy by this Court, we find that the prosecution has failed to produce any evidence whatsoever to satisfy the Court that there was a prior meeting of minds between the appellant and A-1 and A-2. There is no physical manifestation of such a concurrence extractable from surrounding circumstances, declarations, or the conduct of the appellant. The evidence is shorn of even a passive acknowledgment of conspiracy of the appellant with the accused, let alone heralding a clear and conscientious participation of the appellant in the conspiracy. As noted above, this Court has cautioned against replacing mere suspicion with the legal requirement of proof of agreement."

13. Finally, Learned Counsel, Mr. R. Datta for the accused persons-in-custody also drawn the attention of the Court the accused or applicant No.1 is a government servant serving as Assistant Head Master of School, there is no chance of his

absconsion and tampering evidence as the I/O has laid Charge-sheet and they are the permanent inhabitants of Gandacherra. So, there is no scope on their behalf to influence the investigation and the applicant No.2 being a house lady that is the wife of applicant No.1 and considering the materials on record it is clear that, they did not participate in the commission of murder of the deceased rather on the following day of the alleged occurrence they came to Agartala, so there is no scope to detain them in custody and to refuse their bail application.

It was further submitted that the statement of witnesses referred by the accused persons cannot be believed and those statements of witnesses namely, Souramita and her mother cannot have any bearing and their statements have got no reference of the alleged accused persons-in-custody with the murder of the deceased. So, the story of the prosecution cannot be believed rather it should be dismissed/rejected henceforth.

14. The submission of Learned Counsel was countenanced by Learned Special P.P., Mr. S. Lodh. Learned Special P.P. first of all drawn the attention of the Court the earlier order passed by this Court on 03.11.2025 in B.A. No.75 of 2025. The operative portion of B.A. No.75 of 2025 observed as under:-

"Situating 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.”

Referring the same, Learned Special P.P. drawn the attention of the Court that at the time of hearing of earlier bail application all the issues were discussed in detail and after considering all these things this Court rejected the bail application and at this stage, the accused persons could not place any fresh materials on record to consider their bail application. So, this present bail application is not maintainable. Regarding ground of arrest Learned Special P.P. submitted that the issue has been dealt with earlier and at the time of arrest and forwarding of the accused persons-in-custody to the Court the “Grounds of arrest” were duly communicated to the accused persons and as such on the issue of “Ground of arrest” there is no scope to release the accused persons on bail.

15. In support of his contention, Learned Special P.P. appearing for the State-respondent referred one citation of the Hon’ble Supreme Court of India in ***Lt. Col. Prasad Shrikant Purohit Vs. State of Maharashtra*** reported in ***(2018) 11 SCC 458***, wherein in Para No.30, Hon’ble Apex Court observed as under:-

“30. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.”

Referring the same, Learned Special P.P. drawn the attention of the Court the accused persons-in-custody could not place any materials before this Court at this stage to consider the

bail application as no new materials could be projected on behalf of the accused persons-in-custody.

16. Finally, Learned Special P.P. appearing for the State-respondent submitted that since by the earlier order all the point of arguments raised by Learned Counsel for the accused persons-in-custody have been discussed and decided and at this stage on behalf of the accused persons-in-custody, there is no new materials on record. So, Learned Special P.P. urged for dismissal of this bail application.

17. Learned Special P.P. for the respondent in addition to his submission also drawn the attention of the Court referring the statements of witnesses namely, Souramita and her mother and submitted that the accused persons-in-custody had a pre plan and made conspiracy since long back and even it is found that they were not participated in the murder of deceased directly but their involvement with the alleged conspiracy cannot be disbelieved. So, finally Learned Special P.P. urged for dismissal of this bail application.

18. I have heard both the sides at length and perused the relevant prosecution papers. Admittedly, in this case the I/O after completion of investigation has laid charge-sheet against 6 (six) numbers of accused persons namely, Sri Dibakar Saha, Miss Nabanita Das, Sri Joydeep Das, Sri Animesh Yadav, Sri Dipak Chandra Saha, Smt. Debika Saha and accordingly Learned CJM, West Tripura, Agartala by order dated 06.09.2025 took cognizance of offence punishable under Sections 61(2)(a)/238(a)/238(b)/127/58/103/3(5) of BNS, 2023 against the aforesaid accused persons.

19. It is true that in earlier occasions the present accused persons-in-custody also moved another bail application which was rejected by this Court after elaborate hearing of both the sides on 03.11.2025. At the time of disposal of the earlier bail application all the points which have been argued by Learned Counsels have been taken care of and were discussed. The accused persons-in-custody at this stage before the Court could not place any fresh ground to consider the bail application of the accused persons-in-custody. The allegation of the prosecution is no doubt grave and from the record of the Learned Trial Court it appears that the trial is not yet been commenced and the other accused persons-in-custody are also in custody. At this stage, their release may affect the trial of this case. So, considering the materials on record and the nature of allegation at this stage I do not find any scope to grant bail to the accused persons-in-custody. Accordingly, their bail application stands rejected.

The accused persons have to remain in J/C as before. Learned Special Judge shall make all endeavour for early disposal of the case since all the accused persons are incarceration in jail.

The citations referred by Learned Counsel for the accused persons at this stage would not help this Court to consider bail application of the accused persons-in-custody. Since, those were dealt with during early hearing of the bail application as stated Supra.

Send down the record to the Learned Trial Court along with a copy of this order also supply a copy to the I.O. through Learned Special P.P. for information.

With this observation, this present bail application stands disposed of.

JUDGE



Amrita

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