

# Sabujer Rahaman @ Sabuj (45) vs The State Of Tripura on 6 May, 2026

HIGH COURT OF TRIPURA  
AGARTALA  
Crl.Rev.P. No.25 of 2026

- 1.Sabujer Rahaman @ Sabuj (45),  
Son of Ajiulla Chowdhury,  
Resident of Khilpara, Amtali,  
P.S. R.K. Pur, District: Gomati Tripura
- 2.Ali Ahamed (42),  
Son of Ojir Ali,  
Resident of Tarapukur, Ward No.1,  
P.S. Sonamura, District: Sepahijala Tripura

-----Accused Petitioners

-Vs-

The State of Tripura,  
represented by the Principal Secretary  
to the Government of Tripura,  
having his office at New Secretariat Complex,  
Gorkhabasti, P.O. Kunjaban, P.S. New Capital Complex,  
Sub-Division: Sadar, District: West Tripura, PIN:799 010

---Respondent

For Petitioner(s) : Mr. Debajit Biswas, Adv.

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

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

06/05/2026

Learned Counsel Mr. D. Biswas is present for the petitioner accused convicts and Learned P.P. Mr. R. Datta is present for the State.

Heard both the sides.

This is regarding maintainability of the petition filed by the petitioner challenging the order dated 30.01.2026 passed by Learned Sessions Judge, Sonamura, Sepahijala Tripura in Crl. Misc. No.07 of 2025 arising out of Crl. Appeal No.09 of 2025. The petition was filed under Section 397 Cr.P.C. read with Section 401 of the Cr.P.C. corresponding to Section 438 read with Section 442 of BNSS, 2023.

At the time of hearing Learned Counsel appearing for the petitioners drawn the attention of the Court that the petitioner- accused persons were convicted by a judgment dated 04.08.2025 passed

by Learned CJM, Sepahijala District, Sonamura in connection with PRC(WP) 94 of 2024. By the said judgment Learned Trial Court found the appellants to be guilty and passed the following orders:

Accordingly considering the nature of the offences and the premeditated manner in which the offences were committed, the convicts Ali ahammed and Sabujer Rahaman are hereby is sentenced to suffer rigorous imprisonment (RI) for a term of 7(seven) years and to pay fine of Rs.50,000/- (fifty thousand) each i.d. to suffer simple imprisonment (SI) of six months for commission of offence under Sections 457 of I.P.C. and the convicts Ali Ahammed and Sabujer Rahaman are further sentenced to suffer rigorous imprisonment (RI) for a term of seven years and to pay fine of Rs.50,000/-

(fifty thousand) each i.e. to suffer simple imprisonment (SI) of six months for commission of offence under Section 382 of I.P.C. and it was further ordered that both the sentences shall run concurrently.

Challenging that order the present petitioners convicts preferred an appeal to the Court of Learned Sessions Judge, Sepahijala District, Sonamura and also filed an application for suspension of the sentence passed by Learned CJM dated 04.08.2025 till disposal of the appeal under Section 389 of Cr.P.C.

According to Learned Counsel for the petitioners by order dated 30.01.2026 Learned Sessions Judge, Sepahijala District, Sonamura has rejected their application and challenging that order they have filed this revision petition.

In support of his contention, Learned Counsel for the petitioners relied upon one judgment of the Andhrapradesh High Court in *Boya Nallabothula Manohar vs. State of Andhrapradesh* reported in 2024 SCC OnLine AP 618, wherein in para No.10 Hon'ble Andhrapradesh High Court observed as under:

"10. Section 389(1) of the Code lays down the power of an Appellate Court to deal with a petition seeking suspension of execution of sentence and release of a person in confinement, pending disposal of the appeal. Coming to Section 389(2) of the Code, this provision is vivid as to the authority of the High Court to exercise the very same power of the Appellate Court as envisaged under Section 389(1) of the Code, when the appeal is pending before a Court Subordinate to the High Court. In the case on hand, the appeal preferred by the Accused is pending before the Appellate Court, which is a District Court, which is a Court that is subordinate to the High Court. In that view, this Court also has jurisdiction to entertain the present petition filed under Section 389(2) of the Code, as clear from the very wording of the provision."

He also relied upon another order of the High Court of Allahabad in *B.K. Tiwari vs. State of U.P.* and Another reported in (2016) 6 A11LJ 657 wherein in para Nos.9, 10, 12, 13 and 14 the High Court of

Allahabad observed as under:

"9. It may be relevant to extract the relevant provisions in this regard, which read as under:

389. Suspension of sentence pending the appeal;

release of appellant on bail.

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

[Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.]

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3).....

(4).....

10. A bare perusal of the aforesaid provisions would be sufficient to indicate that the power with regard to granting or rejecting the bail exercisable by the lower appellate court can very well be exercised by the High Court also, by virtue of sub-section (2) of Section 389 of Cr.P.C. If an appeal by a convicted person is filed in a court subordinate to High Court then the powers which the subordinate court of appeal would exercise are concurrent with the powers of the High Court in this regard by virtue of 389(2) of Cr.P.C. In fact just as has been provided by Section 439 of Cr.P.C. that a High court or a court of Session both may direct the release of an under trial accused on bail, similarly in case of an appeal filed by a convicted accused also the power of the subordinate appellate court with regard to bail can also be exercised by the High Court to whom the lower appellate court is subordinate to. There does not appear to be any ambiguity with regard to the aforesaid provisions.

12. So far as the refusal of Registry to accept the application moved on behalf of the convicted accused u/s 389(2) of Cr.P.C. is concerned, the same cannot be vindicated on the ground of any pragmatic difficulties which the Registry might be facing in this regard. If appropriate categories

have not been carved out in this regard as yet, the Registry can always do so now. If appropriate systems are to be generated or improvised upon in this regard the same must also be done by the Registry. If there is a statutory remedy provided under law, it is the right of a person to invoke and seek the same. This Court does not feel persuaded to invoke or exercise its inherent jurisdiction for the purposes of granting the normal statutory reliefs which have been provided under law. The statutory schemes of law and the statutory remedies cannot and should not be bypassed in ordinary course. The inherent jurisdiction u/s 482 of Cr.P.C. is little known to be used for the purposes of releasing an accused on bail. There are sufficient statutory provisions provided for this purpose in the Code of Criminal Procedure and they must be adhered to. In this regard the alleged inconvenience which the Registry might confront in generating the requisite systems or in doing the needful in this regard cannot constitute a good ground for this Court to exercise its inherent jurisdiction.

13. It is almost ironical and not little embarrassing to see that an accused in custody has been shuttling from pillar to post, from one court to another in the quest of justice for no fault which may be attributed to him. The period of incarceration is being perpetuated not because the Court has not found it fit to release him on bail but because the existing technical systems generated in the computers could not prove equal to the requirement of the situation. The registry must rise to the occasion and address the problem in right earnest. This Court can ill- afford to impart this impression to anyone, be he the victim or the accused, that the door's of justice were not kept ajar for him.

14. This application, therefore, is being disposed off with the direction to the Registry of this Court to take necessary steps in this regard and do the needful forthwith. If a proper application u/s 389(2) of Cr.P.C. is moved by the accused-applicant the same shall be accepted by the Registry and shall be dealt with accordingly."

Referring the same Learned Counsel for the petitioner- convicts submitted that although they approached to the High Court for filing application under Section 389(2) of Cr.P.C. but that was not considered and as such they were compelled to file this revision petition and prayed before this Court to pass an appropriate order.

On the other hand, Learned P.P. strongly objected the submission since the order challenged was an interlocutory order. According to him in view of Section 397(2) of Cr.P.C. there is no scope to entertain the application filed by the petitioners. In support of his contention he referred one order of the Madras High Court in Udaiyar @ Sattaiudaiyar and Ors. vs. State represented by Sub Inspector of Police dated 07.03.2018 wherein in para No.2 Hon'ble Madras High Court observed as under:

"2. In the considered opinion of this Court, an order of dismissal of application for suspension of sentence and bail is not a final order and is only an interlocutory order and, therefore, the revision is maintainable in view of the bar under Section 397(2) of the Code of Criminal Procedure. It is open to the petitioners to work out their remedy in the manner known to law."

Further reference was made in another judgment of Madras High Court in Bapuji Murugesam vs. Mythili Rajagopalan reported in 2022 SCC OnLine Mad 3258 in para No.17 the High Court of Madras observed as under:

"17. Thus, in this context, it is pertinent to state that by the judgment of Kerala High Court in Samuel George, Maliyekkal Bunglow's case (cited supra), it has been held that such powers are in the interlocutory in nature and Revision is not maintainable. Even in a case as instance case where the direction of deposit is made coupling it as a condition for grant of suspension of sentence, this Court had already held in Udaiyar @ Sattaiudaiyar and Anr. Vs. State [Crl.R.C.(MD).No.126 of 2018] (stated supra) that the order for grant of suspension of sentence or bail are all interlocutory orders and are not revisable under Section 397 of the Code of Criminal Procedure. Therefore, viewing from any angle, I hold that the Revision against the present order is not maintainable."

Referring the same Learned P.P. submitted that this present petition is liable to be dismissed.

I have heard both the sides and also perused the citations referred by the parties. It appears to me that since the appeal is pending before the Court of Learned Sessions Judge, Sepajjala District, Sonamura so at this stage against the rejection order of suspension of sentence passed under Section 389 of Cr.P.C. by the said Court, the only remedy lies with the petitioner convict persons is to approach the High Court invoking the jurisdiction under Article 389(2) of Cr.P.C. which provides as under:

"(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto."

Thus, after hearing both the sides this Court is of the considered view that the present petition under Section 397 is not maintainable and accordingly the same stands dismissed. However, liberty is given to the petitioner convicts to file appropriate application to the Registry of the High Court under Section 389(2) of Cr.P.C. and in that case the Registry of the High Court may accept the same and register the case accordingly for hearing and disposal.

With this observation, this Criminal Revision Petition stands disposed of.

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

AMRITA DEB Digitally signed by AMRITA DEB Date: 2026.05.07 10:13:44 +05'30' JUDGE  
Moumita