

The State Of Tripura vs Sri Raja Saha on 15 May, 2026

TRHC010021492025

2026:THC:633

HIGH COURT OF TRIPURA
AGARTALA
Crl.P.No.07 of 2026

The State of Tripura,
Represented by the Secretary,
Home Department, Government of Tripura.

.....Petitioner(s)

VERSUS

Sri Raja Saha,
S/o Late Braja Gopal Saha
Resident of Town Pratappgarh, Suryasen Samaj School,
P.S.- East Agartala, District- West Tripura.

.....Respondents.

For Petitioner(s) : Mr. Raju Datta, P.P. For Respondent(s) : Mr. Arindam Bhattacharjee, Adv, Mr. Subham Majumder, Adv.

Date of Hearing : 08.05.2026

Date of delivery of
Judgment and Order : 15.05.2026

Whether fit for
Reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This application under Section 528 of BNSS

corresponding to Section 482 of Cr.P.C. is filed for setting aside the order dated 18.11.2024 passed by Learned Additional Sessions Judge, Court No.4, West Tripura, Agartala in B.A. No.234 of 2024 wherein the respondent-accused was granted present bail by the Learned Trial Court.

02. Heard Learned P.P., Mr. R. Datta appearing on behalf of the State-applicant and also heard Learned Counsel, Mr. A. Bhattacharjee appearing on behalf of the respondent- accused.

03. Taking part in the hearing, Learned P.P., Mr. R. Datta drawn the attention of the Court referring the FIR laid by the informant, Apu Rani Sarkar, on the basis of which East Agartala, P.S. case No.119 of 2024 was registered under Sections 329(3)/308(5)/109/61(2)/351(2)/3(5). It was further

submitted that after registration of the case the respondent- accused approached for anticipatory bail and Learned Additional Sessions Judge, Court No.4 at the time of delivery of the order came to the observation that there was no materials against the respondent-accused under Sections 109/308(5) of BNSS, 2023 and Section 111(1) of BNS, 2023 and ultimately granted pre-arrest bail to the accused without application of proper mind for which the interference of the Court is also required. It was further submitted that after granting of pre- arrest bail by the Learned Trial Court, he threatened one of the prime witness of the case and for that said prime witness, Dipa Dasgupta on 25.09.2025 submitted one FIR to O/C, East Agartala P.S. on the basis of which another case has been registered. So, Learned P.P. submitted that since the respondent-accused has violated the conditions of bail granted to him and the order passed by the Learned Trial Court suffers from infirmities and as such the same needs to be interfered with and accordingly, the prosecution has filed this petition for cancellation of bail granted to the respondent-accused.

Reliance was placed in this regard to a judgment of Hon'ble Supreme Court of India in State of Karnataka v. Sri Darshan Etc. reported in (2025) SCC OnLine SC 1702, wherein in para Nos.18.1, 18.4 and 18.8, Hon'ble the Apex Court observed as under:

"(A) Annulment of bail orders 18.1. This refers to the appellate or revisional power to set aside a bail order that is perverse, unjustified, or passed in violation of settled legal principles. It is concerned with defects existing at the time the bail was granted, without reference to subsequent conduct.

18.4. Similarly, in Dr. Narendra K. Amin v. State of Gujarat, (2008) 6 Scale 415, a three-Judge Bench held that consideration of irrelevant materials renders the bail order vulnerable and liable to be set aside.

18.8. In Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129, this Court reiterated that while no exhaustive list can be laid down, courts must always consider the totality of circumstances, including the seriousness of the offence, prima facie evidence, and potential for interference with the trial."

Referring the same Learned P.P. submitted that considering the facts and circumstances of the case, the order of present bail needs to be cancelled.

He also relied upon another order of the Coordinate Bench of this Court dated 23.03.2026 in CrI.P.No.13 of 2026 wherein in para Nos.19, 24 and 34 it was observed as under:

[19] In reply, Mr. S. Sarkar, learned senior counsel appearing for the respondent-accused has submitted at the outset that the present petition under Section-528 of BNSS for setting aside the order dated 27.02.2026 passed by the learned Court below is not maintainable in its present form and nature inasmuch as, it is settled law that the provision of Section-528 of BNSS cannot be invoked if there is a specific provision in the statute for the redress of the grievance of the aggrieved party i.e. the cancellation of bail. There is no direct evidence linking the accused with

the crime. The police has filed charge-sheet merely on suspicion and based on the witnesses who are totally doubtful.

[24] It is well settled by a catena of judgments rendered by the Hon'ble Apex Court that the consideration for grant of bail and cancellation thereof are entirely different. The respondent fully cooperated with the I.O. of the case in the earlier phase of investigation also and has not misused the liberty granted to him. Further the personal liberty is guaranteed by the Constitution which is entitled by the respondent. The principle of law that bail is the rule jail is the exception, the Hon'ble Apex Court in a catena of recent judgments has time and again reaffirmed the aforesaid principle of law and as such, the bail granted to the respondent is liable to be continued as long as he complies with the conditions imposed by the learned Court below.

[34] In *Ajwar v. Waseem and Another a/w other*, reported in (2024) 10 SCC 768, the Hon'ble Apex Court has observed as follows:

"26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. [Refer : *Chaman Lal v. State of U.P.* [*Chaman Lal v. State of U.P.*, (2004) 7 SCC 525 : 2004 SCC (Cri) 1974] ; *Kalyan Chandra Sarkar v. Rajesh Ranjan* [*Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] ; *Masroor v. State of U.P.* [*Masroor v. State of U.P.*, (2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] ;

Prasanta Kumar Sarkar v. Ashis Chatterjee [*Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] ; *Neeru Yadav v. State of U.P.* [*Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] ; *Anil Kumar Yadav v. State (NCT of Delhi)* [*Anil Kumar Yadav v. State (NCT of Delhi)*, (2018) 12 SCC 129 : (2018) 3 SCC (Cri) 425] ; *Mahipal v. Rajesh Kumar* [*Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] .]

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In *P v. State of M.P.* decided by a three judge Bench of this

Court (authored by one of us (Hima Kohli, J), has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) CrPC in the following words:

24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial. To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."

28. The considerations that weigh with the appellate court for setting aside the bail order on an application being moved by the aggrieved party include include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.

30. Keeping in mind the aforesaid parameters, we may now proceed to examine the pleas taken by the parties so as to decide as to whether the impugned orders can be sustained or not. On a careful consideration of the entire records, we are inclined to agree with submission made by the learned counsel for the appellant complainant that the impugned orders are unjustified and suffer from grave infirmity. The primary factor that has swayed the learned Single Judge of the High Court in granting bail to the accused Waseem is that even though the prosecution version is that 11 accused persons had assaulted the appellant complainant and members of his family on indiscriminate firing taking place, only three persons had sustained injuries and two had expired on the side of the appellant complainant. At the same time, serious injuries were also received on the side of the accused which could not be explained by the prosecution. In the case of the accused Nazim, the High Court observed that there was no distinction between the role attributed to him and the co-accused Waseem and that the injuries suffered on the side of the respondent had not been explained by the prosecution. The High Court has also gone on to observe that the investigation conducted by the police was one-sided and the case set up by the accused side was ignored. In the case of Aslam, his bail application was allowed and the learned Single Judge observed that there is a cross-version of the incident inasmuch as the accused side had also received serious injuries which were not satisfactorily explained by the prosecution. In the case of Abubakar, noting that the co-accused Aslam was granted bail by a coordinate Bench and the case of Abubakar was similar to that of Aslam, he was granted the benefit of bail on grounds of parity."

Referring the same, he submitted that in view of the aforesaid judgment this present petition needs to be allowed.

Learned P.P. in support of his contention further submitted that although at the time of granting of pre-arrest bail, Learned Trial Court came to the observation that Section 109 and Section 308(5) of BNS is not applicable, but considering the materials on record the Learned Trial Court has framed charge against the respondent-accused on those Sections also for which Learned P.P. also drawn the attention of this Court to take note of the said facts.

04. On the other hand, Learned Counsel, Mr. A. Bhattacharjee appearing on behalf of the respondent-accused submitted that the initial order of bail in B.A. No.234 of 2024 was granted by the Learned Trial Court on 18.11.2024. In the meantime, charge-sheet was submitted by I.O. and after receipt of notice from the Court, the respondent-accused appeared before the Court and got the regular bail. Now, if for any reason the present petition is allowed, in that case what would be the fate of the order by which regular bail was granted to the respondent-accused. It was also submitted that this present application has been filed on 19.12.2025 i.e. almost after more than a year by the prosecution and the alleged FIR which according to prosecution, the respondent-accused threatened the witness was filed on 28.09.2025 which was also after a long gap, but why the prosecution has filed this present petition for cancellation of bail granted to the accused after a long delay. There was no such explanation by the prosecution in this regard. Furthermore, there is no evidence on record that the respondent-accused has violated the conditions of bail. It is also not on record that there was any supervening circumstances to draw any adverse inference against the respondent-accused and as such this present petition is not maintainable and the same is liable to be dismissed.

Learned Counsel also submitted that by this time the record has been committed to the Court of Sessions and meanwhile charge has been framed against the respondent-accused and two others by the Court of Learned Sessions Judge and the case is now pending for trial. So, at this stage there is no scope to consider the prayer of the prosecution.

Learned Counsel for the respondent-accused referred few citations:

In Central Bureau of Investigation v. Santosh Karnani & Anr. along with another connected matter reported in 2023 SCC OnLine SC 427, wherein in para No.35, Hon'ble the Apex Court observed as under:

"35. It is true that cancellation of bail must be done only for cogent and overwhelming reasons. Nevertheless, setting aside an unjustified order granting bail is distinct from cancellation of bail. This Court would not, invariably intervene into the judicial discretion exercised by the High Court while granting bail to an accused. All that to be ensured is that the High Court exercises its discretion judiciously, cautiously and strictly in conformity with the basic principles laid down by this Court from time to time in a series of decisions."

Referring the same, Learned Counsel submitted that in this case there is no overwhelming reasons to cancel the bail granted to the accused.

Further reference was made upon another judgment of the Hon'ble Supreme Court of India in *Bharatbhai Bhimabhai Bharwad v. State of Gujarat & Ors.* reported in (2020) 18 SCC 693, wherein in para No.9, Hon'ble the Apex Court observed as under:

"9. It is well settled that the consideration applicable for cancellation of bail and consideration for challenging the order of grant of bail on the ground of arbitrary exercise of discretion are different. While considering the application for cancellation of bail, the court ordinarily looks for some supervening circumstances like; tampering of evidence either during investigation or during trial, threatening of witness, the accused is likely to abscond and the trial of the case getting delayed on that count, etc. Whereas, in an order challenging the grant of bail on the ground that it has been granted illegally, the consideration is whether there was improper or arbitrary exercise of discretion in grant of bail. The appellant has challenged the very grant of bail on the ground of arbitrary exercise of discretion ignoring the relevant materials to be considered in the application for bail. Since the High Court proceeded under the footing as if the appellant had filed the application only for cancellation of bail for which, the consideration is different, the impugned order [*Bharatbhai Bhimabhai Bharwad v. State of Gujarat*, 2019 SCC OnLine Guj 1524] is liable to be set aside and the matter is remitted to the High Court for consideration of the matter afresh."

Reference was further placed upon another judgment in *Renjith v. State of Kerala* represented by Public Prosecutor reported in 2023 SCC OnLine Ker 1252, wherein in para No.11, Hon'ble the Apex Court observed as under:

"11. The mere registration of a subsequent crime against the accused by itself cannot result in an automatic cancellation of bail. Registration of a subsequent crime is only an indication of an allegation or a complaint of the accused having been involved in a subsequent crime. The presumption of innocence available to the accused in the second crime, the right to liberty as a fundamental right under Article 21 of the Constitution of India which envelopes every provision of the Code of Criminal Procedure are factors which cannot be forgotten by the Court when called upon to cancel the bail. The possibility of false accusations being alleged with oblique motives also cannot be ignored. The nature of the subsequent offence and the persons against whom the offence is alleged to have been committed, the stage of the case wherein cancellation is sought are also factors that require appreciation. Apart from the above, while arriving at the conclusion to cancel the bail, the Court must also consider whether the accused had misused the liberty granted in such a manner that it has a tendency to interfere with the due course of the administration of justice. Thus, every case presents a unique situation and close scrutiny ought to be indulged in to identify whether overwhelming circumstances are indeed present in the

subsequent crime which necessitates the cancellation of bail earlier granted."

Lastly, Learned Counsel referred another citation of the High Court of Punjab, Haryana at Chandigarh in Roshan Lal vs. State of Haryana & Anr. reported in (2024) Supreme (P&H) 1164 wherein in para No. 9 the said High Court of Punjab and Haryana observed as under:

"9. It would be apposite to refer herein to a judgment passed by this Court titled as Dinesh Madan v. State of Haryana and another passed in CRM-M-9029-2023, decided on 17.05.2024; relevant whereof reads as under:-

"12. The concept of "cancellation of bail" is statutorily manifested in terms of Section 439 (2) of 1973 Code. This concept was embodied in the earlier statute i.e. 1898 Code as well albeit with difference(s). The ratio decidendi of judgment in case of Gurcharan Singh (supra) makes it clear that, in the 1898 Code, the bail granted by the High Court could be cancelled only by it & bail granted by a Sessions Court could be cancelled by such Sessions Court only.

However, Section 439(2) of 1973 Code has vested power to cancel bail which has been granted "under this chapter" upon both the High Court as also the Sessions Court. The words "under this Chapter" relates to Chapter XXXIII of Cr.P.C. of 1973 & hence the unequivocal result thereof is that the High Court as also the Sessions Court have requisite powers to cancel "any bail" granted by "any Court" by way of powers vested racy and under this Chapter. In other words; the High Court is well empowered to cancel a bail granted by itself or by a Sessions Court or by the Court of a Magistrate while the Sessions Court is empowered to cancel a bail granted by High Court or by itself or by a Magistrate.

However, a Sessions Court can cancel bail granted by High Court only on account of supervening/new circumstances or on account of misconduct of such accused or on account of violation of any condition(s) imposed by the High Court while granting bail. The Magistrate can, of course, cancel bail granted by him but he cannot cancel a bail granted by High Court or Sessions Court except when such accused has violated/contravened any condition(s) imposed upon by such High Court or Sessions Court while granting bail to such accused. This position, is indubitable, as a Magistrate has been vested with powers for cancellation of bail only in terms of Section 437(5) of 1973 Code whereas the High Court and Sessions Court have been vested with powers under Section 439 of Cr.□□, of 1973 to cancel "any bail granted under Chapter XXXIII of 1973 Code".

Referring the same, Learned Counsel submitted that from the aforesaid observations it can be construed as to under what circumstances bail once granted can be cancelled.

Considered.

05. In this case, prosecution was set into motion on the basis of an FIR laid by one Smt. Apu Rani Sarkar Roy to O/C, East Agartala, P.S on 20.10.2024 alleging inter alia that she is the proprietor of Mahalaxmi Stores situated at Kaman Chowmuhani. In the year, 2018 she had sold a land at

Khayerpur and few months ago the respondent-accused along with others came to their house and started demanding cash amount of Rs.2 crores and threatened her and her family members that they will kill her and her family members. It was also stated that the accused persons are very dangerous connected with land scam. On 19.08.2024 the said accused persons came to her shop and abused them with filthy languages and threatened the employees of her shop and asked to pay the money immediately, otherwise they would kill her family members. It was also stated that they are continuously threatening her. This is the sum and substance of the FIR. On the basis of which the said case was registered against this respondent-accused and two others. During investigation the other two accused persons were taken into custody and they were produced before this Court and this present respondent-accused was granted pre-arrest bail which has been challenged before this Court by the said application under Section 528 of BNSS.

06. I have also perused the order dated 18.11.2024 passed by Learned Additional Sessions Judge, Court No.4, West Tripura, Agartala. Learned Additional Sessions Judge in disposal of the said application came to the observation that Section 109 and Section 308(5) of BNS was not attracted and as such he has granted pre-arrest bail. The order was passed on 18.11.2024. This present application was filed before this High Court on 19.12.2025 and the alleged complaint which was laid by the witness, Dipa Dasgupta was submitted to the P.S. on 25.09.2025. Thus, prima facie it appears that there was a long delay in lodging the complaint to O/C of the concerned P.S. by the witness. It is not the case of the prosecution that immediately, after granting bail the accused violated the conditions of bail granted. It is also surprising how after a long gap the prosecution has filed the application for cancellation of bail granted to the accused that long delay has not been explained by the prosecution during hearing of this case. But at the same time, there is also no bar for the prosecution to file such a petition if the accused actually violates the condition of bail granted to him.

07. I have also perused the FIR and the statement of witnesses so far collected by I.O. during investigation. Since the trial has not been commenced and the evidence of the witnesses has not yet been recorded, so, at this stage, with certainty it cannot be said that the respondent-accused is totally innocent. He is to face the trial and after completion of trial the fate of the case would be decided. From the contents of the FIR it appears that the informant in the FIR stated that regarding a land which was disposed of by her in the year 2018 the respondent-accused and others demanded Rs.2 crores to her and thereafter, they continuously threatened her and her family members seeking money. As already stated the Learned Trial Court by this time has framed charge against this respondent-accused and two others under Sections 329(3)/308(5)/109/61(2)/111(2)(b) read with Section 3(5) of BNS, 2023. So, prima facie it appears that considering the materials found in the charge-sheet the Learned Trial Court framed charge against the respondent-accused and others. It is to be kept in mind that in course of hearing the bail application, there is no scope on the part of any Court to give any specific observation regarding non-application of any particular Section that those Sections are not applicable or cannot be attracted till conclusion of investigation. However, at the time of hearing, Learned P.P. appearing on behalf of the State failed to explain the Court as to why after a long delay the application was submitted for cancellation of bail and there is also no evidence on record that the accused has violated the conditions of bail granted to him and prosecution also has failed to explain any supervening circumstances to draw the attention of this Court for

cancellation of bail granted to him by showing any cogent materials on record after a long delay because had there be any evidence of violation of the condition of bail or threatening of witnesses by the respondent-accused, in that case it was the duty of the prosecution to immediately file an application for cancellation of bail granted to him which the prosecution has failed to discharge in this case.

o8. More so, granting of bail and cancellation of bail are two different aspects and in view of the ratio laid down by the Hon'ble Apex Court and the other High Courts as referred by the accused, it appears to this Court that the prosecution at the time of hearing failed to project any supervening/new circumstances to this Court to consider the privilege of anticipatory bail granted to the respondent-accused.

o8. In the result, I find no merit in the application filed by the prosecution. Accordingly, the same stands dismissed. No order is passed as to costs.

Send down the record to the Learned Trial Court along with a copy of this order/judgment. It is expected that Learned Trial Court shall make all endeavour to dispose of the case giving top priority.

Return back the Case Diary, if any, to the I.O. through Learned P.P. With this observation, this present petition stands disposed of.

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

JUDGE

PURNITA DEB DEB
Date: 2026.05.16 14:41:44
+05'30'
Purnita