

**HIGH COURT OF TRIPURA
AGARTALA**

BA No.12 of 2025

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

---Applicant

-Vs-

- 1. Sri Santanu Sen @ Rupan,**
Son of Sri Swapan Kumar Sen,
Resident of A.D. Nagar Road No.14,
Rajib Chowmuhani, P.S. Amtali,
District: West Tripura
- 2. Sri Jayanta Debnath,**
Son of Sri Rajani Debnath,
Resident of A.D. Nagar Road No.14,
Chowrangipara, P.S. Amtali,
District: West Tripura
- 3. Sri Dilip Banik @ Suman,**
Son of Late Dharendra Ch. Banik,
Resident of A.D. Nagar Road No.14,
Rajib Chowmuhani, P.S. Amtali,
District: West Tripura
- 4. Sri Dipan Banik @ Kenchu,**
Son of Late Dharendra Ch. Banik,
Resident of A.D. Nagar Road No.14,
Rajib Chowmuhani, P.S. Amtali,
District: West Tripura
- 5. Sri Piklu Sen @ Suman,**
Son of Swapan Kumar Sen,
Resident of Rajib Chowmuhani, Charipara,
P.S. Amtali, District: West Tripura
- 6. Sri Papan Chakraborty,**
Son of Sri Pradip Chakraborty,
Resident of Rajib Chowmuhani, P.S. Amtali,
District: West Tripura

---Respondent

For Applicant(s)	:	Mr. Rajib Saha, Addl. P.P.
For Respondent(s)	:	Mr. Subrata Sarkar, Sr. Adv. Mr. Kabrabam Dharendra Singha, Adv. Mr. Prasanta Sen Chowdhury, Adv. Mr. Sankar Lodh, Adv. Mr. Hare Krishna Bhowmik, Adv.

HON'BLE MR. JUSTICE BISWAJIT PALIT**Order****23/06/2025**

This bail application under Section 483(3) read with Section 528 of BNSS is filed for cancelling the order dated 07.01.2025 passed by Learned Addl. Sessions Judge, Court No.2, West Tripura, Agartala in connection with ST(T-1)-03 of 2025.

Heard Learned Addl. P.P. Mr. Rajib Saha appearing on behalf of the applicant-State and also heard Learned Counsel Mr. P. Sen Chowdhury appearing on behalf of the respondent No.1, Learned Counsel Mr. H. K. Bhowmik appearing on behalf of the respondents No.2, 3 and 4, Learned Counsel Mr. S. Lodh appearing on behalf of the respondent No.5 and Learned Senior Counsel Mr. S. Sarkar assisted by Mr. K. D. Singha, Learned Counsel appearing on behalf of the respondent No.6.

At the time of hearing Learned Addl. P.P. appearing for the State first of all drawn the attention of the court referring the contents of the FIR laid by one Badal Saha on 18.09.2024 to O.C. Amtali PS and submitted that on the basis of that FIR Amtali PS Case No.118 of 2024 under Section 127(1)/118(2)/109/3(6) of BNS was registered. He further submitted that in course of investigation the I.O. produced accused Papan Chakraborty before the Court on 19.09.2024, the accused Dilip Banik and Dipen Banik surrendered before the Court of Learned Jurisdictional Magistrate on 25.09.2024, the accused Jayanta Debnath and Santanu Sen @ Rupan were also produced before the Court on 26.09.2024 and accused Suman Sen @ Piklu Sen surrendered before the Court of Learned Jurisdictional Magistrate on 30.09.2024 and after

completion of investigation the I.O. submitted chargesheet within time and accordingly by order dated 13.12.2024 Learned CJM took cognizance of offence against the aforesaid respondent-accused persons under Section 127(1)/118(2)/109/3(6) and 103 of BNS. Thereafter Learned JM, First Class, Court No.2, West Tripura, Agartala by order dated 04.01.2025 granted interim bail to all the accused persons till their production before the Court of Learned Sessions Judge on 07.01.2025. Thereafter accused Jayanta Debnath, Papan Chakraborty and Santanu Sen @ Rupan executed their bail bond and accordingly were released on bail. After that on commitment Learned Sessions Judge transferred this case to the Court of Learned Addl. Sessions Judge, Court No.2, West Tripura, Agartala and by order dated 07.01.2025 Learned Addl. Sessions Judge granted bail to all the accused persons including those who were earlier released on interim bail till 07.01.2025. Learned Addl. P.P. thereafter submitted that in the chargesheet the I.O. prayed for holding custody trial of all the accused persons but the Learned Trial Court without application of proper mind released all the accused persons on regular bail and challenging that order the prosecution has filed this application for cancellation of bail granted to all the accused persons. Learned Addl. P.P. in support of his contention further submitted that after release on bail the accused persons threatened the informant and his family members and accordingly the informant of this case submitted one prayer to O/C, Amtali PS on 14.02.2025 and accordingly a prosecution report was submitted by Police against the five respondents excepting Papan Chakraborty which is also annexed

with the application as Annexure-5 and the copy of PR is also annexed with the application as Annexure-6. Learned Addl. P.P. in support of his contention further submitted that the chargesheet was submitted by I.O. within time because the case was registered on 18.09.2024 and the same was forwarded to the Learned Court of Jurisdictional Magistrate on 19.09.2024 and the I.O. submitted chargesheet on 13.12.2024 i.e. within the statutory period of limitation. Thus it appears that the Learned Addl. Sessions Judge at the time of consideration of the bail application ignored the prayer of the I.O. and mechanically passed the order without reflecting any of the grounds ignoring the report of the I.O. for which the intervention of the Court is required and urged for rejection of the order dated 07.01.2025 passed by Learned Addl. Sessions Judge, Court No.2, West Tripura, Agartala in connection with Case No.ST(T-1)03 of 2025.

Thereafter Learned Addl. P.P. in support of his contention relied upon the judgment of Hon'ble Supreme Court of India in **Y vs. State of Rajasthan and Another** reported in **(2022) 9 SCC 269** wherein the Hon'ble Supreme Court in para Nos.8,9 and 12 observed as to how the bail be granted in a case.

"8. This Court has, in a catena of judgments, outlined the considerations on the basis of which discretion under Section 439, CrPC has to be exercised while granting bail. In Gurcharan Singh v. State (Delhi Administration):(1978) 1 SCC 118 this Court has held as to the various parameters which must be considered while granting bail. This Court held as follows:

"24. ...Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with

witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

9. The above factors do not constitute an exhaustive list. The grant of bail requires the consideration of various factors which ultimately depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. However, certain important factors that are always considered, inter alia, relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused [see *State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21].

12. The above principle has been consistently followed by this Court. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 this Court held as under:

"9. We are of the opinion that the impugned order: *Ashish Chatterjee vs. State of W.B.* is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

xxx xxx xxx

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal....."

Referring the same he submitted that in the present case the Learned Trial Court ignored the same principle of law laid down by the Hon'ble Apex Court. Thereafter Learned Addl. P.P. also referred another citation of the Hon'ble Supreme Court of India in **Ajwar vs. Waseem and Another** reported in (2024) 10 SCC 768 wherein in para Nos.27, 28, 29, 33 and 35 observed as under:

"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. vs. State of M.P.* : (2022) 15 SCC 211 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) of the 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: (1995) 1 SCC 349. 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."

CONSIDERATIONS FOR SETTING ASIDE BAIL ORDERS

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 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.

29. In *Jagjeet Singh*: (2022)9 SCC 321, a three-Judges bench of this Court, has observed that the power to grant bail under Section 439 Cr.P.C is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an application for bail. But this discretion is not unfettered. The order passed must reflect due application of judicial mind following well established principles of law. In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail. (Also refer: *Puran v. Ram Bilas* : (2001) 6 SCC 338; *Narendra K. Amin v. State of Gujarat* : (2008) 13 SCC 584.

DISCUSSION

33. Furthermore and most importantly, the High Court has overlooked the period of custody of the respondents-accused for such a grave offence alleged to have been committed by them. As per the submission made by learned counsel for the State of UP, before being released on bail, the accused Waseem had undergone custody for a period of about two years four months, the accused Nazim for a period of two years eight months, the accused Aslam for a period of about two years nine months and the accused Abubakar, for a period of two years ten months. In other words, all the accused-respondents have remained in custody for less than three years for such a serious offence of a double murder for which they have been charged.

35. All the aforesaid factors when examined collectively, leave no manner of doubt that the respondents do not deserve the

concession of bail. As a result, all the four impugned orders are quashed and set aside. The respondents are directed to surrender within two weeks from the date of passing of this order. It is, however, clarified that the observations made above are limited to examining the infirmities in the impugned orders and shall not be treated as an opinion on the merits of the matter which is still pending trial. It is also clarified that in the event of any new circumstances emerging, the respondents shall be entitled to apply for bail at a later stage."

Referring the same he submitted that considering the nature and gravity of the offence and the fact that there is direct allegation against the respondent-accused persons Learned Court below granted bail to all the respondent-accused persons knowing the fact that the chargesheet was submitted within time and furthermore in the order Learned Trial Court did not mention any reasons as to why he considered the applications for bail without showing any specific reasons in a case of this nature which shows non-application of mind by the Learned Trial Court. He also relied upon another citation of the Hon'ble Apex Court in **Bharatbhai Bhimabhai Bharwad vs. State of Gujarat and Others** reported in **(2020) 18 SCC 693** wherein in para Nos.9 and 10 Hon'ble the Apex Court further observed as under:

"8. Though the application has been filed before the High Court under Section 439(2) Cr.P.C. i.e. an application for cancellation of bail, by perusal of the grounds raised in the application, it is seen that the appellant has raised grounds challenging the exercise of discretion in granting bail to respondents No.2 and 3 under Section 439 Cr.P.C. and that the order granting bail is unsustainable in law. In effect, the application filed was only challenging the order of grant of bail on the ground that it was an arbitrary exercise of discretion. The Court while granting bail should exercise its discretion in judicious manner by taking into consideration the relevant facts as held in *State of U.P. through CBI v. Amarmani Tripathi*: (2005) 8 SCC 21.

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 is liable to be set aside and the matter is remitted to the High Court for consideration of the matter afresh."

Referring the same he submitted that in the present case at the time of consideration of the bail application Learned Trial Court did not follow the guidelines prescribed by the Hon'ble Apex Court time and again in different cases and finally urged for cancellation of the bail granted to all the accused persons.

On the other hand, Learned Counsel Mr. H. K. Bhowmik and Mr. P. Sen Chowdhury, Learned Counsel appearing on behalf of the respondents No.1-4 drawn the attention of the Court that the prosecution in this case did not challenge the initial order of bail dated 04.01.2025 passed by Learned J.M., First Class, Court No.2, Agartala, West Tripura in PRC(WP) 579 of 2024 and in this case according to Learned defence counsels chargesheet was submitted after the statutory period and furthermore referring the chargesheet they drawn the attention of the court that in the chargesheet just at the last line the I.O. only submitted to allow the custody trial of all the FIR named accused persons. But the I.O. in his report failed to satisfy as to why the custody trial is required in this case and furthermore there was no infirmity in the order of Learned Addl. Sessions Judge. Learned Counsels further submitted that in the last portion of the chargesheet it was submitted by the I.O. that *"Supplementary chargesheet will be submitted after receiving SFSL Reports from SFSL Narsingarh following procedural norms"* which means the chargesheet was incomplete meaning thereby according to Learned defence counsels the investigation was not completed. So how the I.O.

after filing part chargesheet drawn the attention of the court for holding custody trial of the accused persons without assigning any specific reasons. Learned Counsels thereafter drawn the attention of the Court referring Annexure-5 i.e. the prayer submitted by the informant Badal Saha to O/C Amtali PS wherein the informant only sought for making a GD entry and protection and accordingly to Learned defence Counsels on the basis of the said prayer a PR has already been submitted and more interestingly in the PR the name of the witnesses shown who are the family members of the informant and if the contents of the said allegation/complaint were true which *prima facie* discloses commission of cognizable offence and in that case the I.O. or the O/C of the concerned PS definitely could register a specific case under IPC or BNS but without registering any specific case how the I.O. has submitted simply a PR under erstwhile 107 of Cr.P.C. now 126 of BNSS which shows that with an ulterior motive the petition was filed before the Police Station for the purpose of harassing the accused persons.

Learned defence counsels in their second phase of argument further submitted that as per order dated 07.01.2025 the accused persons were released on bail by the Learned Trial Court. Thereafter further date was fixed on 20.01.2025 and after that the case was fixed on 17.04.2025 and on 17.04.2025 again further date was given on 14.08.2025. But on the aforesaid dates no prayer was submitted either by I.O. or by the prosecution to the concerned court for cancellation of their bail. Nor they submitted any prayer to the concerned court that the respondent-accused persons have violated the conditions of the order of bail granted to

them or they have threatened the witnesses of the prosecution in any manner and this petition was filed by the prosecution before this court on 06.03.2025. But surprisingly no step was taken on the part of the prosecution either to the Learned Court below for cancellation of the bail granted to them nor the prosecution has challenged the prosecution report filed under Section 126 of BNS to any other forum which shows that the prosecution has not come before the court with clean hands and just to harass the accused persons they have filed this application for cancellation of bail.

Learned Counsel Mr. S. Lodh appearing on behalf of the respondent No.5 drawn the attention of this court that on bare perusal of the FIR it is crystal clear that the said respondent at best could be a prosecution witness in this case but surprisingly he has been booked in this case as an accused only on the ground that on the alleged day he was standing at a considerable distance from the alleged P.O. and witnessed the occurrence. But the prosecution could not place any material against him showing his direct participation with the alleged crime and furthermore Learned Counsel also drawn the attention of the court referring the contents of the FIR and the statements of two witnesses and also the contents of the prayer i.e. Annexure-5 made to O/C Amtali PS wherein the informant specifically stated the name of four persons i.e. Santanu Sen, Dilip Banik, Jayanta Debnath and Dipan Banik along with 10/12 other persons. But surprisingly in the PR Police has reflected the name of his client Piklu Sen as OP second party No.5, but totally remained silent in respect of other

persons whose numbers were reflected in the complaint laid to O/C Amtali PS on 14.02.2025 by the informant of this case and adopting the submission made by Learned Counsel Mr. H. K. Bhowmik and Learned Counsel Mr. P. Sen Chowdhury Learned Counsel Mr. Lodh submitted that the said complaint was only for making a GD entry and if the contents of the petition were correct in that case the O/C of the concerned PS could definitely register a specific case against all the accused persons including his client. But surprisingly no action was taken by the I.O. or the O.C. to submit prayer to the concerned Trial Court for cancellation of the bail granted to the accused persons simply they submitted one PR and that prosecution report also has not been challenged by the prosecution in this case which shows that the stand of the prosecution are contrary to each other and in support of his contention he relied upon one citation of the Hon'ble Supreme Court in **Mehboob Dawood Shaikh vs. State of Maharashtra** reported in **(2004) 2 SCC 362** wherein in para No.11 Hon'ble the Apex Court observed as under:

"11. Learned counsel for the appellant is correct on principles that mere assertion of an alleged threat to witnesses should not be utilized as a ground for cancellation of bail, routinely. Otherwise, there is ample scope for making such allegation to nullify the bail granted. The Court before which such allegations are made should in each case carefully weigh the acceptability of the allegations and pass orders as circumstances warrant in law. Such matters should be dealt with expeditiously so that actual interference with the ordinary and normal course of justice is nipped at the bud and an irretrievable stage is not reached."

Referring the same Learned Counsel submitted that the prosecution could not place any material before the Court for interference and furthermore after granting bail on so many dates this present respondent along with others appeared before the Trial Court but before the Trial Court no such prayer was made

either by the informant or by the prosecution or by the I.O. that the respondent-accused persons have violated the conditions of the bail granted to them. So he urged for dismissal of the application of the prosecution.

Further Learned Senior Counsel Mr. S. Sarkar assisted by Mr. K.D. Singha, Learned Counsel appearing on behalf of the respondent No.6 first of all drawn the attention of the Court that in this case according to prosecution there are two eye witnesses and from the statement of those witnesses there was no allegation that his client i.e the respondent No.6 participated in the commission of crime. At best according to the Learned Senior Counsel the said accused person could be a best prosecution witness rather the prosecution falsely implicated him in this case. He further submitted that in the GD there was no allegation against him even the Police also did not submit any PR against him and finally adopting the submission made by Learned Counsel Mr. H. K. Bhowmik and Learned Counsel Mr. P. Sen Chowdhury he submitted that there is no material for cancellation of bail granted by the Learned Trial Court at this stage and urged for rejecting the application filed by the prosecution for cancellation of bail granted to the respondent-accused persons.

I have heard detailed submission of both the sides and also perused the citations referred by Learned Counsels of both the parties and also perused the relevant prosecution papers. In this case the prosecution was set into motion on the basis of an FIR laid by one Badal Saha i.e. the father of the deceased alleging inter alia that on 18.09.2024 his son Subhankar Saha was

returning back to home with his friends driving his scooty after watching Biswakarma Puja at about 12.30 hours when some scuffling were taken place in between two groups and out of them one group armed with sharp cutting weapon attacked his son and caused injury to his head, face and inflicted blows upon the body of his son by sharp cutting weapon resulting which his son sustained bleeding injuries and fell down on the road and his friends also tried to save him and sustained injuries. He was immediately taken to Hapania Hospital from where he was referred to GBP Hospital and due to causing of hurt his son sustained fatal injuries and the FIR was accordingly laid and thereafter his son succumbed to his injuries and the case was registered and the I.O after completion of investigation submitted chargesheet against all the respondent-accused persons as already stated. The respondent-accused persons were in custody for a considerable period of time and later on they were released on bail by order dated 07.01.2025.

It is the admitted position that the prosecution did not file any prayer for cancellation of the bail granted to the respondent-accused persons to the Learned Trial Court where the bail was granted by the order dated 07.01.2025. Although legally there is no bar to approach for cancellation of bail before this court also. I have also perused the order passed by Learned Trial Court on 07.01.2025. It is the admitted position that although in the chargesheet the I.O. in the last para urged for holding custody trial but there was no justification/reasons as to why the I.O sought for holding custody trial of the respondent-accused

persons. In this regard Learned Trial Court gave detailed observations. It is the settled position of law that bail once granted can not to be cancelled in a mechanical manner but at the same time it is also true that unreasoned or perverse order can always be open for challenge to the upper forum. Here in the case at hand from the report of I.O. it transpires that the I.O. was contemplating to submit supplementary chargesheet after receiving of the report of SFSL meaning thereby the I.O. up to that time could not complete the entire investigation and he was willing to submit supplementary chargesheet later on. So considering the period of detention of the accused persons in custody probably the Learned Trial Court considered the bail application of the accused persons by order dated 07.01.2025. The trial of the case is commenced and the case is now posted for framing of charge. Admittedly before the Learned Trial Court no prayer was submitted by the prosecution for cancellation of the bail granted to all the respondent-accused persons. As observed by the Supreme Court in aforementioned case i.e. **Y. vs. State of Rajasthan and Anr.** (supra) for granting bail requires consideration of various factors which ultimately depends upon the specific facts and circumstances of the case. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. However, certain important factors that are always considered, inter alia, relates to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused. Furthermore, Hon'ble the Supreme Court

in **Ajwar vs Waseem** (supra) in para Nos.29 stated that in ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate court would be well within its power to set aside and cancel the bail. In this regard Hon'ble the Supreme Court of India in a case in **Kanwar Singh Meena vs. State of Rajasthan and Another** reported in **(2012) 12 SCC 180** para No.10 observed as under:

"10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this court are much wider, this court is equally guided by the above principles in the matter of grant or cancellation of bail."

[Emphasis supplied]

From the aforesaid observation of the Hon'ble Apex Court further it appears that in granting bail if the courts ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Further the High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from severe infirmities resulting in miscarriage of justice. In this case the I.O. submitted chargesheet excepting the report of the SFSL. It is also true that the informant i.e. the father of the deceased being threatened by the respondent accused persons sought redress to O/C Amtali PS on 14.02.2025 but surprisingly the I.O. inspite of registering any specific case simply submitted a PR under Section 126 of BNS previously known as 107 of Cr.P.C. which shows negligence on the part of I.O. or lack of knowledge by the I.O. for that the victim cannot be suffered. I have also perused the chargesheet meticulously. Recording of evidence in this case has not yet been commenced. But after perusal of the order dated 07.01/2025 passed by Learned Addl. Sessions Judge, Court No.2, Agartala, West Tripura it appears that the Learned Trial Court without assigning any specific reasons and ignoring the available materials on record in a very casual manner granted bail to the respondent Nos.1-4 namely Santunu Sen, Jayanta Debnath, Dilip Banik @ Suman, Dipen Banik @ Kenchu for which it appears to this court that the order in respect of aforesaid four respondent-accused persons needs to be interfered with.

Accordingly the bail granted to the aforesaid four respondent-accused persons stands cancelled as there are materials against them showing their direct involvement with the alleged offence. They are accordingly asked to surrender before the Learned Trial Court on or before 05.07.2025. But considering the materials on record the bail granted to rest two accused persons namely Sri Piklu Sen @ Suman and Papan Chakraborty appears to be justified although specific and valid reasons were not mentioned by Learned Trial Court at the time of passing order of bail in respect of aforesaid two respondent-accused persons. However, considering the facts and circumstances of this case their order of bail is modified to the extent that they shall execute a fresh bail bond of Rs.1,00,000/-(one lakh) with one surety of like amount with condition that they shall attend the Learned Court below once in a week till conclusion of trial and they shall not make any attempt to temper evidence on record of the prosecution nor they shall leave the jurisdiction of the court without prior permission of the court below failing which liberty is given to the prosecution to move for appropriate action. Accordingly the said two respondents Sri Piklu Sen @ Suman and Sri Papan Chakraborty shall execute a fresh bail bond as per order passed by this court today to the satisfaction of Learned Court below on or before 05.07.2025. If the accused persons whose bail is cancelled fails to surrender in that case the prosecution shall take step for taking them into custody without fail by moving application to the court below. However, before departing, it is necessary to mention here that Learned JM First Class, Court No.2, Agartala, West Tripura at the

time of passing interim order to the respondent-accused persons in connection with Case No.PRC (WP) 579 of 2024 on 04.01.2025 passed the following order:

"Considering the submissions of the Ld. Counsels and also considering the entire matter in its totality and regard being had to the entirety of circumstances portrayed herein above, I inclined to grant bail to the accused persons but subject to confirmation by the Ld. Sessions Court."

This order according to the opinion of this court was not correct because it is the prerogative of a court concerned to pass regular or interim order of bail, if interim order of bail is granted in that case simply a direction may be given to appear before the court of Sessions on a particular date. The word subject to confirmation by Sessions Court was not required to be passed which sometimes may create some confusion to the mind of a person in whose favour the order is passed. However in future the concerned court may consider to pass order in accordance with law to avoid any legal confusion regarding granting of bail.

Send down record of the Learned Trial Court below along with a copy of this order.

Return back the CD to the I.O. through Learned Addl. P.P. along with a copy of this order.

A copy of this order be furnished to Learned J.M. First Class, Court No.2, Agartala, West Tripura for information.

Accordingly, this application stands disposed of.

JUDGE