

**HIGH COURT OF TRIPURA  
AGARTALA**

BA 24 of 2023

**Sri Dipak Debbarma**, Age 56 year  
S/O Lt. Pulin Debbarma,  
R/O- Melarmath (Satlakhi Pond),  
P.O- Agartala, P.S- West Agartala,  
District- West Tripura

..... Applicant

**Versus**

**The State of Tripura**

(To be Represented by the L'd Public Prosecutor,  
The Hon'ble High Court of Tripura, Agartala.)

....Respondent(s)

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For the Applicant(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. K. Nath, Advocate
For the Respondent(s)	:	Mr. S. Debnath, Addl. P.P. Mr. S. Lodh, Advocate

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**HON'BLE MR. JUSTICE ARINDAM LODH**

**Order**

**25/08/2023**

This is an application under Section 439 of Cr.P.C. for granting bail to the accused-applicant. On receipt of the complaint, the officer In-charge, West Agartala Police Station had registered an FIR being no.2023/WAG/038 dated 06.03.2023 under Sections 341/325/307/34 of IPC.

2. After receipt of the complaint the investigating officer tried to arrest the accused person, but, the accused allegedly had absconded. It is pertinent to mention herein that the accused-applicant had filed an application for granting anticipatory bail under Section 439 of the Cr.P.C. That anticipatory bail application was filed before the learned Addl. Sessions Judge, West Tripura, Agartala, Court No.5 which was registered as B.A No.91 of 2023. The learned Addl. Sessions Judge vide order dated

19.04.2023 allowed the interim bail of the accused petitioner subject to the following conditions:-

*“(i) the accused petitioner shall make himself available for interrogation by the police officer as and when required:*

*(ii) the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;*

*(iii) the accused petitioner shall not abscond; and*

*(iv) the accused petitioner shall not commit any offence.”*

3. On the next date of hearing, i.e. on 30.05.2023, the investigating officer had submitted reports relating to the injuries suffered by the victim and intimated the court that the accused violated the terms and conditions of the bail order dated 19.04.2023. After consideration of the materials on record, learned Addl. Sessions Judge had observed thus:-

*“I also find that the IO has submitted an adverse report against the accused petitioner, hence, petitioner violated the condition of interim bail and in the injury report I find that the injury was severe in nature which might have been caused the death of the victim.”*

Having observed thus, the learned Addl. Sessions Judge rejected the benefit of interim bail and ultimately rejected the anticipatory bail application of the accused-applicant.

4. The accused-applicant, thereafter had approached this Hon'ble Court by filing an application for granting him anticipatory bail, which was registered as AB No.11 of 2023. The learned Coordinate Bench of this Court in his order dated 22.06.2023 had observed thus:-

*“..... In view of the above statements placed before this court, this court draws an adverse inference against the petitioner for misrepresenting the case and this court is*

*compelled to take serious note on the same. It also appears that the petitioner has not approached this court with clean hands.*

*Furthermore, the medical reports which form part of the investigation needs act of consideration.*

*This court has no hesitation to say that the accused-petitioner shall surrender himself before the concerned court within two working days from today on or before 27.06.2023 and by filing appropriate application may seek appropriate remedy. On receipt of the same, the court below shall consider the case on its merits.*

*In view of the above discussion, the present anticipatory bail stands dismissed.”*

5. In pursuance of the order dated 26.06.2023, passed by this Court, the accused-applicant surrendered before the Court of learned Chief Judicial Magistrate (for short, “CJM”), Agartala, West Tripura. Vide order dated 21.07.2023 the learned CJM rejected the bail application of the petitioner for the reason that the petitioner had abused the benefit of granting interim bail to him by the Court.

6. Against the said order of rejection, the wife of the petitioner, Smt. Gopa Sarkar Debbarma had filed a bail application on behalf of the accused, Sri Dipak Debbarma for granting bail before the court of learned Addl. Sessions Judge, West Tripura, Agartala in B.A 195 of 2023 under Section 439 of Cr.P.C. The learned Addl. Sessions Judge, vide order dated 11.08.2023 passed in B.A. No. 195 of 2023 had rejected the bail application filed on behalf of the accused after making following observations:

*“Perused the case record and the prayer of IO I find that charge sheet has already been submitted and there is prayer for custody trial vide dated 18.07.2023. I also find that initially the accused was granted interim bail and thereafter interim bail was cancelled and thus the prayer under section 438 is rejected. Thereafter, the accused approached before the Hon’ble High Court and Hon’ble High Court of Tripura rejected the bail prayer of*

*observing that the petitioner did not approach the Hon'ble High Court with clean hand and accordingly adverse inference was drawn against the accused person.*

*On perusal of the case record I also find that this court in B. A No.91 of 2023 observed that the injury caused to the victim was severe in nature and which might have been fatal for the victim. I find that though there is no specific case is registered for threatening of the witnesses but a case under section 107 is registered against the accused person who has obtained interim bail from this court and considering the entire matter the interim bail prayer was rejected.*

*Considering the above facts and circumstances particularly the conduct of accused person and observation of Hon'ble High Court I am not inclined to grant bail to the custody accused person.*

*Accordingly, the bail prayer is rejected.”*

7. I have heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the accused-applicant. Also heard Mr. S. Debnath, learned Addl. P.P. appearing on behalf of respondent-State and Mr. S. Lodh, learned counsel appearing for the *de facto*-complainant.

8. Mr. Roy Barman, learned senior counsel for the accused-applicant has submitted that the accused-applicant has been in custody for more than 51(fifty one) days by this time. He has further submitted that this is not the stage for punishing the accused. It is further submitted that the charge-sheet in connection with this case has already been submitted before the Court of learned Chief Judicial Magistrate, but the trial of the case has not been completed yet.

9. The entire crux of submission of Mr. Roy Barman, learned senior counsel is that learned courts below had rejected the prayer for granting bail to the accused-applicant on the ground that the High Court had rejected the bail application of the accused. Learned senior counsel has submitted that both the courts below were influenced by the observations

made by the High Court against the accused-applicant. Learned senior counsel has tried to persuade this court that consideration of granting bail to an accused under Sections 438 and 439 of Cr.P.C. is completely different. He has argued that this Court may grant bail to the accused on any condition, even, the accused-applicant may be directed not to enter into the jurisdiction of West Agartala Police Station. Learned senior counsel has relied upon the registration of the case as NGR under Section 107 of Cr.P.C. on the basis of the complaint lodged by the complainant that she was threatened by the accused during the period of interim bail does not justify the prayer of the accused for custody trial of the accused.

10. On the other hand, Mr. Debnath, learned Addl. P.P. strongly opposing the submissions advanced by learned senior counsel appearing on behalf of the accused-applicant has submitted that if the accused is released on bail, then, fair trial would not be possible at all because the conduct of the accused- applicant itself reveals that he is a dangerous type of person and would not hesitate to take the law in his own hands. Learned Addl. P.P. in support of his submission has placed the copy of the complaint submitted by the complainant to the Officer In-charge, West Agartala Police Station stating *inter alia* that her life would be at stake if the accused is released on bail. Mr. Lodh, learned counsel for the *de facto* complainant also has endorsed the said submissions of Mr. Debnath, learned Addl. P.P.

11. I have considered the rival submissions advanced by learned counsel appearing for both the parties.

12. There cannot be any quarrel to the proposition of law that consideration of granting bail under Sections 438 and 439 of Cr.P.C. is completely different. In the instant case, the learned Addl. Sessions Judge had released the accused on interim bail stipulating the condition that he

would not threaten/intimidate the witnesses to the case. It is evident from the record itself that in spite of this condition, the accused had threatened the complainant with dire consequences. The copy of the complaint which the complainant had submitted to the officer In-charge, West Agartala Police Station being placed before me, which is written in vernacular language, it transpires that the accused not only used abusive languages towards the complainant, but also threatened him that he would not hesitate to take his life stating that neither police nor any court could do anything against him. Even the accused-appellant threatened the complainant that his neck would be separated from his body.

13. I have also perused the prayer of the Investigating officer for the custodial trial of the accused whereby and whereunder he has stated that “*As the accused person has violated the conditions of interim bail and as in the injury report it is found that the injuries sustained by the victim are severe in nature, which might have caused death to the victim, learned Additional Sessions Judge Court no-5, West Tripura, Agartala rejected his prayer for pre arrest bail*”. Furthermore, it transpires that the accused has gone to such an extent that he even did not hesitate to mislead this Court that his presence was necessary to solemnize his daughter’s marriage on 15.07.2023. On enquiry, it was found that the marriage of his daughter was postponed due to the death of the grandmother of the proposed bride.

14. In my opinion, these are the factors which must be considered for granting bail to the accused under Section 439 of Cr.P.C irrespective of the fact that the High Court in earlier bail application had made some observations on the established facts placed before it.

