

THE HIGH COURT OF TRIPURA
AGARTALA

CRL.REV.P. 91 OF 2014

Court on own motion

- V e r s u s -

Sri Narayan Kumar Das
S/O. Lt. Darekanath Das
Ramnagar road no.6,
Agartala, P.S. West Agartala,
District: West Tripura.

..... Respondent.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the State : Mr. A. Ghosh, P.P.

For the respondent : Mr. P.K. Biswas, Sr. Advocate,
Mr. R. Debnath, Advocate,
Mr. P. Majumder, Advocate.

Date of hearing and : 18.12.2014.
delivery of judgment
and order.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

This petition had been registered suo-motu by the Court on its own motion because of the following reasons:-

“One Shri Narayan Kr. Das filed a petition for grant of Anticipatory Bail being Bail Application No. 359 of 2014. This application was listed in the Court of Addl. Sessions Judge (Court No. 4), West Tripura, Agartala and was rejected on 21st November, 2014 with the following observations:-

“On perusal of the materials available before me, prima facie I find incriminating

materials against the accused petitioner. Further the case is initial stage of investigation.

Considering all aspects I am not inclined to allow the anticipatory bail application filed by the accused-petitioner at this stage.

Hence, the anticipatory bail petition filed by the accused-petitioner stands rejected.”

Though the Anticipatory Bail application was rejected, it appears that the accused-petitioner was never arrested and he filed another petition for grant of Anticipatory Bail. There is no bar to filing a second petition, but in the second petition there should have been some averment as to what are the changed circumstances. The record of the case be summoned to show what was stated in the second bail application. However, the same presiding officer on 1st December, 2014 granted bail to the petitioner. In the order granting bail, no reference has been made to the earlier order passed by the same presiding officer on 21st November, 2014 i.e. only 10 days earlier. There is nothing in the order to show whether the presiding officer considered what are the changed circumstances now entitling the petitioner to grant of bail. On the very same ground for which the bail was earlier rejected, the bail has now been granted. The only difference is that the accused was directed to deposit a sum of Rs. 60,000/- within 30 days. I fail to understand how the second bail petition could have been allowed without the Court coming to a conscious decision that there are some changed circumstances after the earlier order was passed.

Furthermore, granting of bail by asking an accused, who is alleged to have committed an offence of criminal breach of trust by directing him to deposit Rs. 60,000/- gives an impression that

accused of such offences can avoid going to jail by depositing huge sums of money.”

2. Thereafter, this Court had directed that both the bail applications being Bail Application NO. 359 of 2014 and Bail Application No. 381 of 2014 be called for so as to reach today. Notice was also issued to the respondent-bail petitioner.

3. Sri A. Ghosh, learned Public Prosecutor, has appeared on behalf of the State and Sri P.K. Biswas, learned Sr. Counsel instructed by Sri R. Debnath and Sri P. Majumder, learned counsel, has put in appearance on behalf of the respondent.

4. My attention has been drawn to the second bail application which was filed on 25-11-2014. In the said bail application, there is specific averment about the earlier bail application being filed and in fact, the copy of the order rejecting the bail petition has also been annexed with the second bail application. The bail petitioner in the second bail application had stated that some documents and statements were not incorporated in the first bail application and those may be taken on record for deciding the said bail application. There are a large number of documents filed with the second bail application which were not filed with the earlier bail application. The bail petitioner had, therefore, tried to make out a ground that due to these changed circumstances, he was entitled to bail despite the fact that his earlier bail application had been rejected. As I have already observed in my previous order, a second bail application is

maintainable but the bail petitioner must show that there are changed circumstances which entitled him to grant of bail.

5. Though the bail petitioner has done his part of the job and has set out the facts which according to him were sufficient to grant bail being changed circumstances, I am constrained to observe that the learned Additional Sessions Judge concerned did not even care to follow the basic principles of law. He has not even made reference to the fact that the earlier bail application was dismissed. The same was dismissed by him on 21-11-2014 and the second bail order was passed on 01-12-2014, i.e. only 10 days later. This averment had been made in the petition. It is expected of a senior Judicial Officer to take note of the fact that an earlier bail application was dismissed. The Judicial Officer was thereafter required to spell out the changed circumstances in the second order and justify the grant of bail. This has also not been done. All that has been said in the second bail order is as follows:-

“Hence, after hearing the submissions of both the sides, I am of the opinion that the alleged crime committed in this case is a serious one in nature and there is presence of sufficient materials against the accused. However, the primary object of non-granting of bail being securing the presence of the accused at various stages of judicial proceedings, bail is to be granted where presence of the accused can be secured by alternative means. Further from the photographs submitted by the petitioner it appears various programmes were organized under N.S.S. scheme.

On perusal of the materials before me and also considering the submissions of both sides and also relying on the decision of the Hon'ble Supreme Court of India in the case of M. Sreenivasulu Reddy Vrs. State of T.N., reported in (2002) 10 SCC 653, I am inclined to allow the anticipatory bail application filed by the accused-petitioner on certain condition."

6. There is no reasoning whatsoever in the application. In the first part, the Judge has noted that the crime committed is a serious one and there is sufficient material against the accused. According to him, the primary object of grant or non-grant of bail is to ensure the presence of the accused at various stages of judicial proceedings and he has stated that where the presence of the accused can be secured by alternative means, bail should be granted. The learned Judge totally lost sight of the fact that the case was not at the trial stage but at the stage of investigation. At this stage when the case is only under investigation, the primary consideration is whether the presence of the accused is necessary for the purpose of investigating the case or not. The other ground which has weighed with the learned trial Court is the judgment of the Apex Court in **(2002) 10 SCC 653**. The learned Judge has not even cared to state what were the facts of that judgment reported in the Supreme Court cases or what was the law laid down in the said case. Before applying a judgment as a precedent, the Judge must show how this precedent is applicable to the facts and circumstances of the case. The manner in which the order has been written is absolutely sketchy.

7. Normally this Court would have sent back the matter to the Court concerned for rewriting the order and for giving reasons. However, in this case the liberty of a citizen is involved and he pursuant to the directions issued by the learned Court below has already deposited a sum of Rs.60,000/- (rupees sixty thousand). I also find that in the subsequent application certain averments had been made and documents had been placed on record to show that the funds which are alleged to have been misappropriated were allegedly used for the N.S.S. functions but even more important is the fact that according to the respondent-petitioner, he had to take his son for treatment to Susrut Eye Foundation.

8. Keeping in view these facts, I do not want to interfere in the order granting bail but the following conditions are now imposed in addition to the conditions already imposed by the Court below:-

(i) The respondent-petitioner is directed to appear before the Investigating Officer day after tomorrow (20-12-2014) at 10-30 a.m. and shall assist in the investigation. In case, there is any complaint that the petitioner is not assisting the investigation, then the prosecution shall be at liberty to apply for cancellation of the bail;

(ii) That, thereafter the respondent-petitioner shall appear before the Investigating Officer as and when called upon to do so by issuing a written notice;

(iii) The respondent-petitioner shall not leave the State of Tripura without permission of the learned Additional Sessions Judge concerned;

(iv) The respondent-petitioner shall, as already directed, not tamper with the prosecution evidence. He shall also not try to meet any of the prosecution witnesses or influence them in any manner whatsoever. In case of violation of any of the conditions of this bail order, the prosecution shall be entitled to apply to the Court for cancellation of the bail;

(v) It is also made clear that the respondent-petitioner and his surety shall furnish additional bail bonds undertaking therein that in furtherance to the bail bonds earlier furnished by them, the accused shall appear before the Investigating Court as and when called upon to do so and shall also not in any manner delay the trial.

(vi) This order of grant of bail shall be valid only till the charge-sheet is filed whereafter the respondent-petitioner will have to apply for regular bail before the trial Court.

9. With these observations, the petition is disposed of.

10. Send down the lower court records forthwith.

11. Copy of this order shall be supplied to all the Judicial Officers in the State.

CHIEF JUSTICE