

**HIGH COURT OF TRIPURA
AGARTALA**

AB 17/2025

1. Smt. Gouri Debnath (Podder) (aged about 30 years), W/o: Sri Saikat Podder, resident of Dhaleswar Road No.1, P.S.: East Agartala, District-West Tripura.

2. Smt. Dipu Debnath (aged about 65 years), W/o: Sri Lohori Debnath, resident of Ranirbazaar, Durganagar, P.S.: Ranirbazaar, District-West Tripura.

....Applicant(s)

Versus

The State of Tripura

....Respondent(s)

For Applicant(s) : Mr. S. Lodh, Advocate
Mr. S. Majumder, Advocate

For Respondent(s) : Mr. Rajib Saha, Addl. P.P.

Date of delivery
of order : 10.03.2025

Whether fit for reporting : Yes

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER

This is an application filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 for granting anticipatory bail to the accused-applicants, namely Smt. Gouri Debnath(Podder) and Smt. Dipu Debnath since they are under serious apprehension that they will be arrested in connection with Ranirbazaar Police Station crime No.2024 RNB 028, registered under Sections 96 and 49 of the Bharatiya Nyaya Sanhita, 2023 and added Section 65(1) of BNS, 2023 and Section 4(1) of the POCSO Act.

2. The prosecution case as emanated from the F.I.R., briefly stated, is that on 10.11.2024 at about 1600 hours the complainant namely Krishna Chakraborty dropped his minor daughter, the victim (name

withheld) at Ranirbazar near cattle market in order to go to her private tutor's house. After about 10/15 minutes of his return to his house, the private tutor of the victim had informed the complainant that his daughter (victim) did not come to his house for private tuition. On being so informed, the complainant looked for his daughter (victim) and later on, he came to know that Sri Gopal Debnath had forcefully kidnapped his minor daughter (victim) for illegal purpose and/or committing illicit act and parents of said Sri Gopal Debnath, namely, Sri Goutam Debnath and Smt. Titu Debnath (co-accused persons) had abetted said Sri Gopal Debnath to perpetrate the alleged crime.

On the aforesaid factual background of facts, the complainant, Sri Krishna Chakraborty on 12.11.2024 had lodged an F.I.R. with the O/C, Ranirbazar P.S. which was, accordingly, registered as Ranirbazar P.S. Case No.2024 RNB 028, dated 12.11.2024, under Sections 96/49 of the BNS.

Later on, the victim daughter of the complainant was recovered from the uncle's house of the principal accused, namely, Sri Gopal Debnath. After her recovery, she was produced before the Judicial Magistrate 1st Class where she made statements under Section 164(5) of Cr.P.C.

3. I have gone through the said confessional statements where she stated that for the last one year there was love affair between her and the principal accused person, Sri Gopal Debnath. It is further revealed from her statements that she was taken to various places and various types of transportations were used. However, it is apparent on the face of the record that she never tried to draw the attention of any of the commuters that she was abducted/kidnapped without her consent. She never raised any alarm during her entire journey to various places she mentioned in her 164(5) statements. It is also transpired that the girl was recovered with the active

assistance of the father of the principal accused, Sri Gopal Debnath. It is true that she is a minor girl. The Investigating Officer arrested the principal accused, Sri Gopal Debnath, who was in custody for a considerable period of time and later on released on bail by the Court of learned Special Judge (POCSO) vide interim order dated 07.12.2024 which was extended time to time and at present the extension period of the interim bail is going on. In the meantime, the Investigating Officer has also submitted charge-sheet against the principal accused with whom the girl eloped, but no charge-sheet has been filed against the present accused-applicants on the pretext that the applicants were not found available in their respective houses during the raids. As such, a prayer has been made by the Investigating Officer that investigation is going on against Smt. Gouri Debnath (Podder) and Smt. Dipu Debnath, the present accused-applicants and the supplementary charge-sheets will be filed against them after their arrest or following the due procedure of law.

4. In the aforesaid facts and circumstances, I have heard Mr. S. Lodh, learned counsel appearing for the accused-applicants. I have also heard Mr. Rajib Saha, learned Addl. P.P. appearing for the respondent-State.

5. Mr. Saha, learned Addl. P.P. has produced the case diary. A copy of the charge-sheet has also been enclosed with the anticipatory bail application and a certified copy of the order dated 27.02.2025 passed by learned Special Judge(POCSO), West Tripura, Agartala, in connection with the case No.SPL(POCSO) 09 of 2025 has also been placed before this Court by learned counsel appearing for the accused-applicants. From the order dated 27.02.2025, it transpires that one prayer was made by WSI Menu Rani Chakma for issuing arrest of warrant against the absconding accused persons, namely Smt. Dipu Debnath and Smt. Gouri Debnath(Podder). The

learned Special Judge (POCSO) has issued warrant of arrest against the said accused persons and the next date was fixed on 27.03.2025 for appearance.

6. Mr. Lodh, learned counsel for the accused-applicants has submitted that the present applicants are totally innocent and they have no connection with the offence as alleged against them. Mr. Lodh, learned counsel for the accused-applicants has further submitted that the Investigating Officer had visited their houses on so many occasions and they were readily available to the Investigating Officer as they being the housewives. They were also interrogated in their respective houses by the Investigating Officer. Further, it is submitted that they were never absconded and co-operated with the process of investigation. However, they are surprised when warrant of arrest has been issued against them by the learned Court on the prayer of the Investigating Officer. Mr. Lodh, learned counsel for the accused-applicants has submitted that if the investigation is still going on, the applicants shall always co-operate and shall not create any hindrance to the process of investigation. It is further submitted that from the statements of the victim girl recorded under Section 164(5) of the Cr.P.C., it is clear that both the principal accused and the girl were in deep love and out of love they eloped from the custody of their parents.

7. On the other hand, Mr. Saha, learned Addl. P.P. opposing the prayer for granting of anticipatory bail has raised serious objection and has submitted that since warrant of arrest has been issued against the present accused-applicants, the Court should not exercise its discretionary power and release the accused-applicants on anticipatory bail. Reliance being placed upon a decision of Hon'ble Supreme Court in *Srikant Upadhyay and Ors. vs. State of Bihar and Anr.*, reported in *2024 SCC OnLine SC 282*, Mr. Saha, learned Addl. PP has submitted that when warrant of arrest or

proclamation is issued, the accused-applicant is not entitled to invoke the extraordinary power of the Court. Mr. Saha, learned Addl. P.P. has drawn my attention to paragraph 25 of the case *supra*, which is reproduced hereunder, for convenience, in extenso:

“25. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.”

8. Learned Addl. P.P. has further drawn my attention to a portion of the charge-sheet which is reproduced hereunder:

“...Raid & search for absconded a/ps:- In course of investigation I have conducted raid and search in the house of tow involved A/P's namely 1) Smt. Dipu Debnath W/O Sri Lohori Debnath of Ranirbazar, Durganagar, Ward No.1, P.S.-Ranirbazar West Tripura and 2) Smt. Gouri Debnath D/O Sri Goutam Debnath, W/O Sri Saikat @ Suku Podder of Dhaleswar Road No.1 near old Post Office, P.S.-East Agartala, West Tripura in several times and during raid both the a/ps found absconding from their house to evade Police arrest. However, Engaged secret sources at that locality to identify their location but they also failed to give any information about the below noted absconding A/P's. I have also sent RG to all OC PSs Tripura for causing search the absconded a/ps in their respective jurisdiction.

***Prayer sent for issuing NBWA:** During investigation I have sent prayer before the Ld. Court of Spl Judge (POCSO) Agartala on 19.11.2024 & 30.01.2025 for issuing Non Bailable warrant of arrested against two involved A/P's namely 1) Smt. Dipu Debnath W/O Sri Lohori Debnath of Ranirbazar, Durganagar, Ward No. 1, P.S.-Ranirbazar West Tripura and 2) Smt. Gouri Debnath D/O Sri Goutam Debnath W/O Sri Saikat Debnath of Dhaleswar Road No.1, P.S.-East Agartala.”*

9. Mr. Saha, learned Addl. P.P. has submitted that his submission should be recorded that the principal accused had forcibly made intercourse with the victim girl.

10. I have considered the submissions of learned counsel appearing for the parties. I have meticulously gone through the charge-sheet and the statements made by the Investigating Officer in the charge-sheet that he on several occasions raided the respective houses of the present accused-applicants, but the Investigating Officer could not trace them out. I have also considered the statements that the investigation has not been completed against the present accused-applicants and he will file the supplementary charge-sheet after their arrest by observing legal formalities. I have also considered the various aspects of the case or the circumstances under which the girl eloped with the boy i.e. the principal accused. I have meticulously gone through the statements of the victim girl which was recorded by the concerned Judicial Magistrate under Section 164(5) of the Cr.P.C.

11. Having perused the confessional statements, according to me, first striking point is that the girl went to the private tutor's house at 1600 hours on 10.11.2024 when her father had dropped her in front of the tutor's house, but after 10/15 minutes the private tutor informed her father that his daughter did not attend the tuition. Thereafter, her father along with others looked for her they came to know that his daughter was abducted away by the principal accused, namely Sri Gopal Debnath. From this circumstance, it is further revealed that the house of the private tutor is situated at Ranirbazar near cattle market in front of the house of Anath Saha, which means that there were so many houses in and around the house of the private tutor. In the opinion of this Court, it is hard to digest that a girl was forcibly kidnapped by the principal accused but she did not raise any alarm or in

other word, did not try to draw the attention of any of the persons on her way to the places where the principal accused wanted to take her. It is further transpired from her statements that she was taken to a temple where they got married, though, she stated that she was forced to enter into a marriage by the principal accused as well as the present accused-applicants. Here, second noticeable feature is that in the temple also, the girl did not raise any alarm or did not disclose that she was being forced to enter into the marriage and to an utter surprise, she did not raise any objection when vermilion was put on her forehead as a part of the Hindu custom. It is also revealed that from the temple she was taken to various places and lastly, they stayed in the house of the uncle of the principal accused. When it came to the knowledge of the complainant, he lodged the instant complaint with the police and also informed the parents of the principal accused. It also comes to light that it was at the active assistance and co-operation of the father of the principal accused that both the couples were recovered from the house of the uncle of the principal accused. It is stated by the victim girl that they stayed in the house of the uncle for 5(five) days and during their stay, on one night, the principal accused had sexual intercourse with the girl forcibly.

12. *Prima facie*, I am of the opinion that during their stay at the uncle's house for 5(five) days, the victim girl, if it desired sincerely, then, she could have raised her objection easily and could have disclosed to many persons that she was forcibly taken to the house of the uncle of the principal accused.

13. Considering the entire circumstances, as I elucidated here-in-above, it is very difficult to come to a conclusion that the girl was forcibly taken away by the principal accused with the help of the present accused-

applicants. True it is, that the girl is a minor, but, whether the circumstances as I narrated here-in-above come within the purview of the definition of kidnapping/abduction, is a matter of trial. Yes, of course, *prima facie*, it appears that the victim girl is minor; and for this, law will take its own course of action based on the evidence to be recorded during trial. Here, may be Section 4 of POCSO Act is attracted, but, I believe there might not be any role of the present accused-applicants in forcible abduction of the victim girl as alleged against them.

14. I have given my thoughtful consideration to the principles laid down in *Srikant Upadhyay(supra)* and in *State of Madhya Pradesh v. Pradeep Sharma*, reported in (2014) 2 SCC 171, *Prem Shankar Prasad v. State of Bihar*, reported in (2022) 14 SCC 516 and in *Lavesh v. State (NCT of Delhi)*, reported in (2012) 8 SCC 730. While deciding the case of *Srikant Upadhyay(supra)*, the Hon'ble Supreme Court had held thus, at paragraphs 4, 5 and 6, which are reproduced hereunder:

“4. The question of seminal importance that arises for consideration can better be explained and understood by referring to a decision of this Court in Prem Shankar Prasad v. State of Bihar¹, which was rendered after referring to the earlier decisions of this Court in State of Madhya Pradesh v. Pradeep Sharma² and Lavesh v. State (NCT of Delhi)³. In Lavesh's case (supra), this Court held in paragraph 12 thus:—

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

(Underline supplied)

5. In the decision in Pradeep Sharma's case (supra) this Court held that if anyone is declared as an absconder/proclaimed offender in terms of Section 82

Cr. P.C., he is not entitled to relief of anticipatory bail. After extracting Section 438, Cr. P.C., it was further held therein thus:—

“The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.”

6. In Prem Shankar Prasad's case (supra), this Court took note of the fact that the respondent-accused was absconding and concealing himself to avoid service of warrant of arrest and the proceedings under Sections 82/83, Cr. P.C. have been initiated against him, set aside the order of the High Court granting anticipatory bail ignoring the proceedings under Sections 82/83, Cr. P.C. Thus, it is obvious that the position of law, which was being followed with alacrity, is that in cases where an accused against whom non-bailable warrant is pending and the process of proclamation under Sections 82/83, Cr. P.C. is issued, is not entitled to the relief of anticipatory bail.”

15. From the above enumerated principles, I may easily hold that grant of bail under Section 438 of Cr.P.C. or Section 482 of BNSS, 2023 shall not be exercised in a casual manner, but, the Court has to deal with such application with more caution, and the Court will only exercise its extraordinary or discretionary power vested upon it under Section 482 of BNSS or Section 438 of Cr.P.C. in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty. Further, the Court should be loath to grant anticipatory bail when warrant of arrest has been issued against the accused person or when he is declared as a proclaimed offender. The Court while granting anticipatory bail also should take note of the fact that the Court should not be oblivious that the freedom of a citizen is not curtailed due to his/her false implication in a case. It is further settled that judicious discretion of the Court will depend on the facts and circumstances of each case. In the opinion of this Court, the Court will not hesitate to exercise its discretion to

grant the pre-arrest bail in extreme, or exceptional cases in the interest of justice.

16. Keeping in mind the aforesaid principles delineated by the Hon'ble Supreme Court, I have considered the facts and circumstances of the present case as I have already narrated in the preceding paragraphs that it is very hard to digest that the present accused-applicants had abetted the principal accused to take the girl to various places and to enter into marriage forcibly. I have already stated that both the victim girl and the principal accused used various types of transportations on their way to various places, but the victim girl never raised any alarm to draw the attention of the people around her that she was forcibly abducted by the principal accused who has already enlarged on bail by the Special Judge (POCSO) as an interim measure and it has been extended from time to time. So, there is serious doubt in the mind of this Court that the victim girl was forcibly taken away from the custody of her lawful guardian.

17. In view of the aforesaid discussions and applying the principles laid down by the Hon'ble Supreme Court as quoted here-in-above, in the opinion of this Court, in the nature of the present case, if the present accused-applicants are not enlarged on anticipatory bail, then, it will cause serious miscarriage of justice. However, I have reasonable grounds for holding that the present accused-applicants shall not misuse the liberty of granting anticipatory bail.

18. In view of this, I am of the opinion that the present case is such a case where this Court will definitely invoke its extraordinary power to release the accused-applicants on pre-arrest bail as urged by them.

18. In the light of above discussions and the reasons stated, it is ordered that in the event of arrest, the accused-applicants shall be released

on bail on furnishing a bond of Rs.25,000/- each with one surety of like amount each to the satisfaction of the arresting authority. However, it is directed that the accused-applicants shall appear before the Investigating Officer tomorrow at 10:30 a.m. positively in the Office of the Officer In-charge, Ranirbazar Police Station in connection with the case. The Investigating Officer may interrogate the accused-applicants.

Accordingly, the instant anticipatory bail application stands allowed and disposed.

The case diary is returned to learned Addl. P.P.



JUDGE