

**HIGH COURT OF TRIPURA
AGARTALA**

B.A. No.30 of 2025

The State of Tripura

represented by the Secretary
to the Government of Tripura,
Home Department, Agartala.

----- Applicant (s)

Versus

Sri Saikat Talapatra,

S/o Late Ranjit Talapatra
resident of AD Nagar Road No.6,
P.O. & P.S.- A.D. Nagar,
District-West Tripura (under custody
At Kendriya Sansodhanagarh, Bishalgarh)

-----Respondent(s)

For Applicant(s)	:	Mr. Raju Datta, P.P.
For Respondent(s)	:	Mr. Purusuttam Roy Barman, Sr. Adv, Mr. Kawsik Nath, Adv.
Date of Hearing	:	07.11.2025
Date of delivery of Judgment and Order	:	14.11.2025
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This application under Section 439(3) of Cr.P.C. corresponding to Section 483(3) of BNSS is filed by the prosecution for cancellation of the order of bail dated 24.04.2025 passed by Learned J.M. 1st Class, Court No.6, Agartala, in connection with case No. PRC (WP) 58 of 2024. By

the said order Learned Trial Court has granted bail to the respondent-accused.

02. Heard Learned P.P., Mr. Raju Datta appearing on behalf of the State-appellant also heard Learned Senior Counsel, Mr. P. Roy Barman assisted by Learned Counsel, Mr. Kawsik Nath appearing on behalf of the respondent-accused.

03. Taking part in the hearing, Learned P.P. first of all drawn the attention of the Court that on the basis of an FIR laid by one Puja Roy, this present case was registered against the respondent-accused by O/C, West Agartala Women P.S. and after that by order dated 29.11.2023 the accused was shown arrested in connection with this case.

It was further submitted by Learned P.P. that against this present accused some other cases were pending across the State and almost in all the cases he was languishing in jail and after completion of investigation, the I.O. laid charge-sheet against the accused, Saikat Talapatra and another under Sections 120(B)/354(A)/384/386/500/506/509 of IPC and under Section 67(A) of IT Act and accordingly, Learned CJM, West Tripura, Agartala by order dated 29.01.2024 took cognizance of offence and the case was transferred to the Court of Learned J.M. 1st Class, Court No.6 for disposal as per law. Before the Learned Trial Court a prayer was submitted by the prosecution for holding custody trial of the accused on 07.03.2024 and the Learned Trial Court after

hearing both the sides by order dated 01.05.2024 passed an order for holding custody trial of the accused. Thereafter, on so many occasions bail prayer was filed on behalf of the accused-in-custody but that was rejected by the Learned Trial Court time to time but later on, on 24.04.2025 Learned Trial Court granted bail invoking the provision of Section 437(6) of Cr.P.C. which was not permissible in the eye of law and challenging that order, the prosecution has moved this application before this Court for cancellation of the order of bail granted to the accused.

Learned P.P. further submitted that there was no power on the part of the Learned Trial Court to review or modify the earlier order of custody trial and Section 362 of Cr.P.C. does not empower the Court to alter or review the judgment or final order except to correct clerical or arithmetical error.

In this regard, Learned P.P. relied upon one citation of the Hon'ble Apex Court of India In **Vikram Bakshi & Ors. vs. R.P. Khosla & Anr.** reported in **(2025) SCC OnLine SC 1783**, wherein in para Nos.27, 28 and 34, Hon'ble the Apex Court observed as under:

"27. The law relating to power of a criminal court to review or alter its own judgment or order is governed by the provisions of Section 362 of CrPC (equivalent to Section 403 of Bhartiya Nagrik Suraksha Sanhita, 2023). The Provision explicitly provides that except for clerical and arithmetical error, no court shall alter or review its judgment. It is appropriate to refer to the

bare provision of Section 362 of CrPC which reads as follows:

"362. Court not to alter judgment.— Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

27A. The comparison of the power of review of a civil court visa-vis power of criminal court to review or recall its own judgment or order arising out of criminal proceedings has been put to rest by numerous decisions of this Court. It would be appropriate at this juncture to discuss the relevant decisions of this court pertaining to review or recall power of criminal courts to ascertain the correct position of law before proceeding to refer and deal with the factual matrix of the present case.

28. The scope of Section 362 of CrPC has been discussed and elaborated by a three-judge bench decision of this Court in State of Kerala v. M.M. Manikantan Nair⁴, wherein it held that CrPC does not authorize High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 explicitly prohibits the court after it has signed its judgment or final order disposing of case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal court can review its own judgment or order after it is signed.

34. A careful consideration of the statutory provisions and the aforesaid decisions of this Court clarify the now-well-settled position of jurisprudence of Section 362 of CrPC which when summarize would be that the criminal courts, as envisaged under the CrPC, are barred from altering or review their own judgments except for the exceptions which are explicitly provided by the statute, namely, correction of a clerical or an arithmetical error that might have been committed or the said power is provided under any other law for the time being in force. As the courts become functus officio the very moment a judgment or an order is signed, the bar of Section 362 CrPC becomes applicable, this, despite the powers provided under Section 482 CrPC which, this veil cannot allow the courts to step beyond or circumvent an explicit bar. It also stands clarified that it is only in situations wherein an application for recall of an order or judgment seeking a "procedural review" that the bar would not apply and not a substantive review" where the bar as contained in Section "362 CrPC is attracted. Numerous decisions of this Court have also elaborated that the bar under said provision is to be applied stricto sensu."

Relying upon the same, Learned P.P. drawn the attention of the Court that by the subsequent order of bail dated 24.04.2025 delivered by Learned Trial Court, the Trial Court has reviewed its earlier order dated 01.05.2024 which the law does not permit. As such in view of the principle of law laid down by the Hon'ble Apex Court in the aforementioned case, Learned P.P. urged for setting aside/cancel the order dated 24.04.2025 passed by Learned Trial Court and to direct the Trial Court to dispose of the case in-accordance-with law.

04. On the other hand, Learned Senior Counsel, Mr. P. Roy Barman assisted by Learned Counsel, Mr. Kawsik Nath appearing on behalf of the accused person drawn the attention of the Court that this is one of the high profile cases and this accused has been falsely implicated in so many cases across the State and in this case also the accused is languishing in jail for a considerable period of time and he has been shown arrested in connection with this case w.e.f. 19.11.2023 and even according to Learned Senior Counsel, if the accused is found guilty in this case after conclusion of trial also, it will be found that he has served the maximum period of imprisonment in custody and more so, the Learned Trial Court passed the order during pendency of trial of this case and the prayer for custody trial was allowed before trial. So, according to Learned Senior Counsel there was no infirmity in the order passed by Learned Trial Court and in support of his contention Learned

Senior Counsel relied upon one citation of the Hon'ble Apex Court reported in **AIR (2025) SC 1483 [titled as *Subhelal alias Sushil Sahu v. State of Chhattisgarh*]** wherein in para Nos.9, 13 and 17, Hon'ble the Apex Court observed as under:

"9. Sub-section (2) of Section 437 of the Code can be divided in two parts. The first part would indicate that it is mandatory, but in the next breath, the legislature has given discretion to the Magistrate not to grant bail by assigning reasons. In that situation, although the first part can momentarily said to be mandatory, it cannot be interpreted to give an indefeasible right to the accused of being released on bail, since that right is controlled/regulated by the later part of the sub-section. If legislature had stopped at the end of the first part, making it mandatory for the Magistrate to release the accused on bail if the trial is not over within 60 days from the first date of taking evidence, the provision would have been somewhat akin to sub-section (2) of Section 167 of the Code. But, with the second part being in its place, the two provisions cannot be equated. The provision of sub-section (6) of Section 437 can certainly be said to have been inserted with an intention to speed up the trial without unnecessarily detaining a person as an under-trial prisoner for a prolonged time. Contrary to that, Section 167(2) leaves no room for any discretion with the Court so far as release of an accused on bail is concerned in the given set of circumstances. Under this provision of the Code no reason is good to deny bail to the accused.

13. In our view, following factors would be relevant:

1. Whether the reasons for being unable to conclude trial within sixty days from the first date fixed of taking evidence, are attributable to the accused?
2. Whether there are any chances of the accused tampering with evidence or causing prejudice to the case of the prosecution in any other manner?
3. Whether there are any chances of abscondence of the accused on being bailed out?
4. Whether accused was not in custody during the whole of the said period?

If the answer to any one of the above referred fact situations or similar fact situations is in affirmative then that would work as a fetter on the right that accrues to the accused under first part of sub-section (6) of Section 437 of the Code.

17. This Court is of a considered view that applications under Section 437 (6) have to be given a liberal approach and it would be a sound and judicious exercise of discretion in favour of the accused by the Court concerned more particularly where there is no chance of tampering of evidence e.g. where the case depends on documentary evidence which is already collected; where there is no fault on part of the

accused in causing of delay; where there are no chances of any abscondence by the accused; where there is little scope for conclusion of trial in near future; where the period for which accused has been in jail is substantial in comparison to the sentence prescribed for the offence for which he is tried. Normal parameters for deciding bail application would also be relevant while deciding application under Section 437(6) of the Code, but not with that rigour as they might have been at the time of application for regular bail."

Referring the same, Learned Senior Counsel drawn the attention of the Court that there was no infirmity in the order passed by Learned Trial Court and urged for dismissal of the application filed by the prosecution.

05. I have heard both the sides at length and perused the record of the Learned Trial Court. In this case as already stated the case was registered on the basis of an FIR laid by one Puja Roy against this present accused and another and on conclusion of investigation, the I.O. laid charge-sheet against both of them. After hearing both the sides, it appears that the impugned order was passed by Learned Trial Court under Section 437(6) of Cr.P.C.

Now for the sake of convenience, I would like to reproduce herein below the relevant provision of Section 437(6) of Cr.P.C. which provides as follows:

"437(6). If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail, to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs."

From the aforesaid provision, it appears that the first part would indicate that it is mandatory but in the next part, the legislature has given discretion to the magistrate not to grant bail by assigning reasons.

06. But here in the case at hand Learned Trial Court once allowed the prayer of prosecution for holding custody trial by order dated 01.05.2024 but later on by another order dated 24.04.2025 granted bail to the accused with the following assertions:

".....It is true that on 01.05.2024, after considering the entire case record along with the materials/evidences placed, that this court allowed the prayer for custodial trial and, thereafter, on 07.10.2024, charges were framed against the accused persons, and the trial commenced. The case record was then fixed for examination of CSPW No.1 on 25.11.2024 after noting down the listed vacation period from 09.10.2024 till 03.11.2024. While this court considered the prayer for custodial trial, the grounds for consideration were the possibility of hampering/tampering, of absconsion and the conduct of the accused as several other cases were filed based on similar acts. It is important to mention that the stage was inquiry and the stage of the case record now, is trial. The custodial trial prayer was allowed by providing an opportunity to the prosecution to conclude the trial within a considerable period of time and once the trial commenced, the grounds for deciding bail prayer U/S 437(6) of Cr.P.C. override and are more weighty than the grounds considered by the court while deciding prayer for custodial trial. At this juncture, reliance is placed on the judgment passed by the Apex Court in Subhelal @Sushil Sahu v. State of Chattisgarh Criminal Appeal No.818/2025 wherein the Apex Court elaborated essential factors to be considered to be relevant while deciding bail prayer U/S 437(6) of Cr.P.C. and the court also explained further that if answer to any of the factors is in the affirmative, then that would work as a fetter on the right that accrues to the accused under first part of sub-section (6) of Section 437 of Cr.P.C."

From the aforesaid observation of the Learned Trial Court, it appears that considering the materials on record the Learned Trial Court initially allowed the prayer of the

prosecution on the ground of possibility of hampering and tampering of evidence, chance of absconsion and also on the ground of having some other cases against him with further expectation that the prosecution can take step to control the trial but as no effective step was taken by the prosecution, so, bail was granted, which in my considered opinion was not proper on the part of the Learned Trial Court. Because once the Trial Court passes an order for holding custody trial and that order still stands good and until and unless that order remain unchallenged or without recording evidence of material witnesses, in my considered view it was not proper on the part of the Learned Trial Court to grant bail to the accused, since in view of Section 362 of Cr.P.C., there is no scope to review or modify its own order and thus, clearly bars the Learned Court trial to review its earlier order by the subsequent order passed.

The citation referred by prosecution in this regard is very much applicable for decision of this matter. So, the order dated 24.04.2025 passed by Learned Trial Court appears to be passed without jurisdiction, incorrect and also not in-accordance-with the established procedure of law.

07. Thus, the order dated 24.04.2025 passed by the Learned Trial Court stands cancelled and set aside. From the record of the Learned Trial Court, it appears that in this case I.O. has cited 31 nos. of witnesses in the charge-sheet. So, all endeavour should be made by the Learned Trial Court to

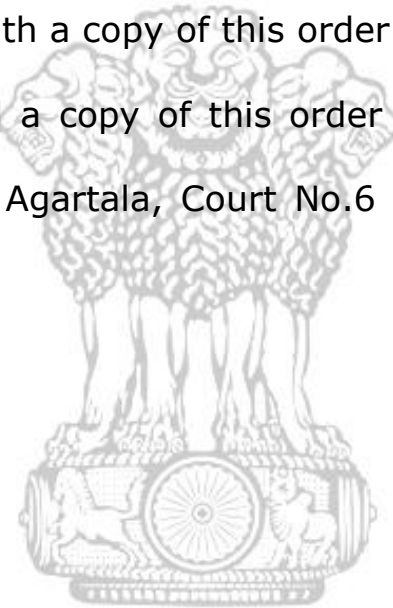
dispose of the case giving top priority at an earliest on the ground that the accused is languishing in jail. However, it will be always open for the respondent-accused to move for bail to the appropriate forum in accordance with law, if he so advised.

With this observation, this present bail application stands disposed of.

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

Return back the Case Diary, if any, to IO through Learned P.P. along with a copy of this order.

Also, send a copy of this order to Learned J.M. 1st Class, West Tripura, Agartala, Court No.6 for information and compliance.



JUDGE