

Court of Addl. Sessions Judge-II, Rosera
ST-619/2019

09.01.2020

1. Accused Chandan Kumar was produced from custody, and attendance of one accused Raj Kumar Sah and representation for another accused Mithun @ Mithilesh Sah were also filed, but the absenting accused Aman Singh had not appeared despite summons having been issued for his appearance, and this case pending for the framing of the charges, and this is a dacoity case u/s 395, 412 of the IPC.

2. Ld defence counsel Sri Amrit Anand pleaded that the record of the absenting accused may be separated and thereafter the charges may be framed as one accused Chandan Kumar is in custody and the Hon'ble High Court had graciously been pleased vide order dt. 28.08.19 in Cri. Misc. - 33251 of 2019 observe that this accused Chandan Kumar would be released on bail after the framing of the charges and even the amount of the bail and the sureties had also been mentioned in that order, and therefore for the ends of justice the charges may be framed after separating the record of the absenting accused Aman Singh.

3. On the hand Ld APP opposing the pleading of Ld defence counsel submitted that this session case is a dacoity case u/s 395 IPC in which section 412 IPC had also been included and the absenting accused Aman Singh is not only a co-accused but also an accomplice in the crime together with the other accused persons

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including the custody accused Chandan Kumar , and the bifurcation of the record would cause a lot of problems as in such a serious case the separate proceedings for the accused persons would cause harassment for the prosecution witnesses including the victim side as well as the judicial time and the court's resources shall be unnecessarily engaged on account of such separation of the records and due to the separate proceedings in the same criminal case , and Ld APP also pleaded that the custody period as per the record appears to be only since 19.02.19 as in such a criminal case this custody period is comparatively very less as this accused appears to be a hardent criminal as his confessional statement dt. 18.02.19 and that of the co-accused Aman Singh dt. 17.02.19 as well as the case record itself shows as the looted articles had also been recovered from the possession of this accused Chandan Kumar as the seizure list dt. 18.02.19 shows , and therefore from any angle such separation of record at this nascent stage of such a serious case would not be conducive for the proceedings of this dacoity case as well as would also not be in the interest of justice , and therefore after waiting for some time for the appearance of the absenting accused Aman Singh , the proceedings of the charge framing could be done which would be appropriate and expedient in the given facts and circumstances of the present case .

4. Ld APP also further attracted attention towards the aforesaid order dt. 28.08.19 of the Hon'ble High Court in Cri. Misc.

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33251 of 2019 and pleaded that the Hon'ble High Court had graciously been pleased to observe with respect to the bail matter of this accused Chandan Kumar when the case had not been committed to this session court and the same had been pending before the Ld Magisterial Court and the Ld Counsel for this accused Chandan Kumar had not correctly mentioned the nature of the case before the Hon'ble High Court as the Ld counsel for the accused had only mentioned about section 392 of the IPC before the Hon'ble Court and had canceled section 395 IPC and section 412 IPC as the aforesaid order dt. 28.08.19 itself shows , as by that time the chargesheet No.- 135/19 dt. 30.04.19 against u/s 395, 412 of the IPC had already been filed against this accused Chandan Kumar and the three other accused persons including the absenting Aman Singh , and it had been the bounden duty of the Ld Counsel for this accused Chandan Kumar that the Ld Counsel ought to have present the correct nature of the case in the light of the chargesheet dt. 30.04.19 which had already been filed in the court about four months prior to the order dt. 28.08.19 of the Hon'ble Court , and as such this accused Chandan Kumar does not deserve any special privilege and treatment in such given facts and circumstances of this dacoity case u/s 395/412 of the IPC in which the looted articles had been recovered from his possession ; and Ld APP in the last also pleaded that in fact the absenting accused Aman Singh is purposely absconding so that the framing of the charges could be delayed and the prosecution witnesses including the victims of this case may not depose against him , as this accused had been on bail

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and he had been fully aware of the commitment of his case as the commitment order itself shows and it had been his bounden duty to appear suo motu in the session court, and it was also the duty of the other accused persons who were also the co-accused and accomplices in the alleged occurrences of this case as well as the sureties and the pairvikars that they should have also taken proper steps for the appearance of the absconding Aman Singh so that the proceedings must not have been hampered and particularly when there had been the aforesaid order dt. 20.08.19 of the Hon'ble High Court on record , and therefore the Ld APP pleaded to issue NBW as well as the processes u /s 82 and u/s 83 of the CrPC for the appearance of the absconding accused Aman Singh.

5. Having heard the Ld counsels from both the sides and after perusing the case record including the order dt. 28.08.19 of the Hon'ble High Court in Cri. Misc. 33251 of 2019 , and also taking into account all other attending facts and circumstances of this case this court considers that prior to the framing of the charges at least for some time the endeavours on the part of all concerned ought to be undertaken for the appearance of the absenting accused Aman Singh so that the charges could be framed together in connection with all the four accused persons whose case had been committed together as the same had arisen out of the same FIR, dt. 10.02.19 and the same chargesheet dt. 30.04.19; and further the record shows that the absenting accused

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Aman Singh had not appeared despite the summons having been issued for his appearance at the session level and it was also his bounden duty to appear himself after commitment of this case.

6. Accordingly office is directed to issue NBW alongwith the process u/s 82 of the CrPC for the appearance of the absenting accused Aman Singh so that the charges could be earnestly framed in this dacoity case as one accused Chandan Kumar is in continuous custody, and all concerned must co-operate for the needful .

Put up for the appearance of the absconding accused Aman Singh on **09.02.2020.**

Dictated

Addl. Sessions Judge-II, Rosera
Date- 09.01.2020