

T.R Case No.06 of 2023
JO CODE No.WB01460
CNR No.WBUD01-003110-2023

Order No.28
31.01.2025

Today is fixed for appearance, report, hearing of petition dated 18.01.2024 and appearance of the I.O and also for order.

Accused persons Alia @ Pinky Das, Sanchita Nayeon, Kaustav Shil and Md. Sahanawaz on bail are present by filing haziras.

Accused Prabal Gurung on bail in this case has been produced through VC on the strength of production warrant issued against him.

Ld. Counsels of all sides are present.

The petition dated 18.01.2024 filed on behalf the de-facto complainant is taken up for hearing.

Heard all sides. Heard I.O in person.

Perused the case record and also the report submitted by the I.O.

Minutely peruse the decision decided on 20.01.2023 of Hon'ble Bombay High Court passed in Criminal Writ Petition No.300 of 2023, decision of the Hon'ble Court passed in CRR 1837 of 2008 on 16.08.2023.

After haring all sides and on perusal of the case record it appears that at the time of hearing on 23.04.2024 it was brought to the notice of the Court that initially the complaint was filed by one Beerendra Kumar Upadhyay on behalf of Regional Manager of Asirvad Micro Finance and Gold Loan against two FIR named accused persons on 06.06.2023 and said complaint was lodged for missing of 234 Gold packets weighing about 16.566 kgs from their Branch Office at Islampur. It was also brought to the notice of the Court that such missing was traced during their internal Audit. It has been specific contention from the end of the de-facto complainant that only after filing of charge sheet in the case against total five accused persons and being aware of the same de-facto complainant came to know that Section 409 IPC has been added which was not at the initial stage of this case or during investigation. From the order dated 23.07.2024 it further appears that the specific contention on behalf of the de-facto complainant was that the CS did not reveal that the investigation was properly held in the line of the said complaint and nothing has been made out in the CS regarding whereabouts of the said Gold packets or anything in connection therewith and in this juncture prayer for re-investigation in the case has been made. Record further reveals that considering such submission made on behalf of the de-facto complainant and after hearing Ld. PP-in-charge and also Ld. Advocates for the accused persons, vide order dated 26.09.2024 this Court directed the I.O to be present in person with the report on the aforesaid along with relevant papers as to the investigation on the date fixed positively id necessary order fixing 12.11.2024 has been next date when on 12.11.2024 considering the prayer of the I.O for further time next date was fixed on 07.12.2024. It is on record that on 07.12.2024 I.O did not appear and so after hearing all sides 04.01.2025 has been fixed for next date for appearance, report, hearing of petition dated 18.01.2024 and appearance of the I.O and also for order when information was received as to the absence of the I.O with a prayer for fixing another date and lastly today has been fixed for the same when I.O has turned up with a report.

In view of the aforesaid facts and circumstances this Court has minutely gone through the decisions as relied by the Ld. Advocate on behalf of the de-facto complainant with due consideration of the petition dated 18.01.2024 which appears to have been filed u/s 173(8) Cr.PC and in the light of the facts of the complaint filed by the de-facto complainant and this Court finds that there are some material basis in the prayer made on behalf of the de-facto complainant after hearing the I.O in person and on perusal of the report submitted by him today. It is very much implicit in the record with regard to the prayer made on behalf of the de-facto complainant that the case is related with missing of 234 Gold packets weighing about 16.566 kgs from their Branch Office at Islampur which has not been properly made out either as to the missing or any recovery with regard to those gold packets in the CS.

In such circumstances considering all aspects after minutely going through the decisions of the Hon'ble Courts in the light of Section 173(8) of Cr.PC including other sub-sections of Section 173 of Cr.PC this Court has further gone through the decisions of the Hon'ble Supreme Court passed in Satish Kumar Nyalchand Sha Vs. State of Gujrat reported in (2020)4 SCC 22 and another passed in Chandra Babu Vs. State reported in (2015)8 SCC 774. After minutely going the decisions of the Hon'ble Supreme Court this Court finds that the Court is not obliged to hear the accused before any direction for further investigation as may be made u/s 173(8) of Cr.PC. It is patently clear after conjoint reading of all the sub-sections of Section 173 Cr.PC that submission of a report u/s 173(2) does not preclude further investigation in view of Section 173(8) of Cr.PC.

In the aforesaid discussion and findings, prayer made on behalf of the de-facto complainant for re-investigation/further investigation in the case is considered and allowed.

Accordingly, the contentions of all sides are disposed of.

Fix **14.02.2025** for production, appearance and I.O's report.

Let a copy of this order be sent to the I.O, Islampur PS for information and compliance.

D/C by me

Special Judge(NDPS),
Raiganj,U/Dinajpur

Special Judge(NDPS),
Raiganj,Uttar Dinajpur