

Sessions Case no. 128 of 2013

Order no. 95 dated 04.08.2017

Today is fixed for further hearing on the point of consideration of charge and hearing of the discharge petitions.

Accused 1) Keshav Raj Pokhrel, 2) Arun Moktan, 3) Tenzing Khambachay (Sherpa), 4) Kamal Sinha, 5) Edwin Sanchabir Subba, 6) Goutam Tamang, 7) Pura Thami, 8) Keshar Rai, 9) Dawa Sangey Sherpa, 10) Suraj Singh, 11) Kismat Chhettri, 12) Alok Kantamoni Thulung, 13) Sanjoy Tamang, 14) Bhanu Rai, 15) Amol Lama, 16) Nagendra Pradhan, 17) Ramesh Allay, 18) Ashis Tamang, 19) Subhash Tamang, 20) Khagen Tamang, 21) Sona Sherpa, 22) Ruden Sada Lepcha, 23) Ranjit Rai, 24) Rabin Subba and 25) Pradeep @ Bhupendra Pradhan 26) Dinesh Gurung @ Karate Kaila 27) Anita Lakhandri, 28) Sandhya Gurung, 29) Kabita Dahal, 30) Sunil Rai, 31) Sudesh Rai Majhi, 32) Prasant Chhettri @ Yogen, 33) Miss. Urmila Rumba, are present by filing haziras.

Accused 1) Jiten Tamang, 2) Bimal Gurung @ Daju, 3) Smt. Asha Gurung, 4) Pemba Tshering Ola, 5) Roshan Giri, 6) Binay Tamang, 7) Sushma Rai, 8) Dinesh Theeng, 9) Devendra Sharma, 10) Dipen Malay, 11) Tilak Rai, 12) Babita Ganguly, 13) Naresh Rai, 14) Prabin Subba and 15) Harka Bahadur Chettri are absent.

Ld. Advocates for the above named accused persons filed four petitions under section 317 Cr.P.C. praying for permission to represent the accused persons by them after serving the copy to the ld. Spl. P.P.

In view of the observation made in the earlier order dated 25.07.2017 and in view of the directions passed by the Hon'ble court in CRM no. 5221 of 2015 since the prosecution could not ensure the appearance of the accused persons the prayer u/s. 317 of Cr.P.C. stands allowed.

Hazira filed on behalf of Bharati Tamang (widow of the deceased) through her advocate.

Discharge petition dated 31.01.2017 filed on behalf of accused Pradeep Pradhan @ Bhupendra Pradhan and Jiten Tamang is taken up for hearing and also hearing on the point of consideration of charge.

Ld. Lawyer for the above named accused /petitioners has stated that after the first two investigations by the CID and CBI respectively no case could be made out against the present accused persons. However, during the final charge sheet by the CBI i.e. after a lapse of four years the involvement of the accused/petitioners was found to be in the nature of criminal conspiracy. But in this respect also no cogent evidence has been forthcoming save and except the phone call records as well as being members of the GJMM party. He has relied in the judgement passed in Bhojanlal vs. State of Bihar by the Hon'ble Apex Court and therefore prays for discharge in view of the principles laid down in the above judgement.

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Discharge petition dated 30.01.2017 filed on behalf of accused Alok Kantamoni Thulung @ Rai, Keshab Raj Pokhrel, Puran Thami, Kismat Chhetri, Dinesh Gurung @ Karate Kaila, Tenjing Khambachi, Naresh Rai, Nagendra Pradhan and Keshar Rai is taken up for hearing and also hearing on the point of consideration of charge.

The Id. Lawyer has stated that the involvement of the above accused / petitioners has arisen simpliciter on the ground that they were present at the time of incident at the place of incident. Therefore, the allegation under section 147/148/149 of the I.P.C. would not be attracted and that apart it has been clearly brought on record that the actual assault had been made by Dinesh Subba and Nikol Tamang, both of whom have absconded. Under the circumstance, mere presence itself would not justify framing of charges under the above sections specially when no arms were recovered from their possessions. He has also referred to the 161 statement of lady constable Smriti Dahal recorded on 01.06.2010 and submitted that even she did not state the name of any of the accused excepting accused Puran Thami though she was an eye witness to the incident and her statement was recorded within a short period of the incident. However, during her further examination on 01.2.2011 she has included the names of Alok Kantamoni Thulung, Kismat Chhetri, Dinesh Gurung, Keshab Raj Pokherel and Naresh Rai from the above accused /petitioners and also repeated the names of the accused/ petitioners Alok Kantamoni Thulung, Keshab Raj Pokherel and Naresh Rai during her examination under section 164 Cr.P.C. on 18.05.2011. Furthermore, she has clarified the statement of section 164 of Cr.P.C. on 13.7.2014 as well as on 30.03.2015 by statement under section 161 of the Cr.P.C. He, therefore, submits that such inconsistency in the statement of Smriti Dahal recorded on later dates would be of no evidentiary value and therefore, the above mentioned petitioners with the exception of accused Puran Thami are liable to be discharged. As regards the involvement of accused /petitioners Nagendra Pradhan and Keshar Rai, has been highlighted by the defacto complainant himself during the examination under section 161 of Cr.P.C. Apart from that none of the other witnesses have mentioned their names and the de-facto complainant also mentioned their names at a later date inspite of being the eye witness of the case. He therefore, prays for discharge of the above named accused persons from this case.

Discharge petition dated 03.03.2017 filed on behalf of accused Rabin Subba is taken up for hearing and also hearing on the point of consideration of charge.

Ld. Lawyer for the accused/petitioner Rabin Subba has submitted that the name of accused Rabin Subba was first made by the de-facto complainant during examination under section 161 Cr.P.C. whereas the other two witnesses Smt. Bharati Tamang and Sanjog Tamang have merely named him on hearsay basis. As regards the statement made by Smriti Dahal on 01.02.2011 wherein she has included the name of the above named accused person which is an improvement of the statement made by her on 01.06.2010 which is immediately after the incident and wherein she did not include his name. Therefore, her testimony with regard to the above accused persons cannot be accepted as evidence and therefore the petition is liable to be discharged.

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At this stage the Id. Senior Lawyer for the accused persons namely Bimal Gurung and others prays for adjournment on the ground stated therein.

Heard. Perused the petition. Considered.

Prayer for adjournment is allowed as the Id. Advocate representing accused persons is out of India and for which reason this hearing could not be concluded in the instant schedule even though discharge prayer of 22 out of 48 accused persons could be completed.

Fix 09.08.2017, 10.8.2011 and 11.08.2017 for hearing discharge petitions of the remaining accused persons and also hearing on the point of consideration of charge.

D/C. by me.

Chief Judge
City Sessions Court, Calcutta.

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