

Sessions Case no. 128 of 2013

Order no. 96 dated 09.08.2017

Today is fixed for further hearing on the point of consideration of charge and hearing of the discharge petitions and compliance report from C.P., Howrah Commissionerate.

Accused 1) Keshav Raj Pokhrel, 2) Arun Moktan, 3) Tenzing Khambachay (Sherpa), 4) Kamal Sinha, 5) Edwin Sanchabir Subba, 6) Goutam Tamang, 7) Puran 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) Khagen Tamang, 20) Sona Sherpa, 21) Ruden Sada Lepcha, 22) 24) Rabin Subba and 23) Dinesh Gurung @ Karate Kaila 24) Anita Lakhandri, 25) Sandhya Gurung, 26) Kabita Dahal, 27) Sudesh Rai Majhi and 28) 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, 15) Harka Bahadur Chettri 16) Sunil Rai, 17) Ranjit Rai, 18) Subhash Tamang, 19) Pradeep @ Bhupendra Pradhan and 20) Prasant Chhettri @ Yogen, 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 30.01.2017 filed on behalf of accused Bimal Gurung is taken up for hearing and also hearing on the point of consideration of charge.

Ld. Lawyer for the above named accused /petitioner has stated that his client was charge sheeted mainly on the ground of his designation, as founding President of the GJMM. The allegation made against him in the charge sheet are mainly vague allegations that he had the final say in all the important activities of the GJMM party with no evidence whatsoever. Moreover, his involvement in this case is merely on the basis of hatching criminal conspiracy with other leaders of the GJMM party wherein he threatened to finish of, all the oppositions and for which reason he took the extreme steps of organizing his supporters to attack Madan Tamang and killed him, as the deceased had times without number highlighted the corruption against the top leadership with no evidence again. Furthermore, the prosecution allegation is contradictory in the sense that though the

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prosecution admits that the petitioner/ accused along with other leaders were in Kalimpong, on the day of incident at Darjeeling, but in the same breath the prosecution has submitted charge sheet against the petitioner and others for assaulting the body guard of the deceased Madan Tamang, on 21.5.2010. Moreover, the allegation is merely of threatening the deceased Madan Tamang during various public meetings and press conferences. That apart the only piece of evidence lying with the prosecution is that of the newspaper report of Indian Express which has been authenticated by the author and her editor but the existence of voice tapes of the phone intercepts have been denied. Therefore, the only piece of evidence actually incriminating is the statement by co-accused Nikol Tamang to finish of Madan Tamang but that again also has to be viewed as a statement by co-accused in the absence of any linking evidence that the petitioner/ accused had acted upon such statement. Again, it is the allegation that in the first week of 2010 the accused/ petitioner had organized meeting with other co-accused to takes steps for elimination of Madan Tamang, but in support there is no single evidence. Lastly, the 161 Cr.P.C. statements have all been recorded in English whereas the accused /petitioner hardly knows any other language outside Nepali. Therefore, in the absence of any other evidence it would be difficult for this court to frame charges. He has relied in the judgement passed in – 2014(4) SC page 360 and 2009(3) SCC, Page – 901, Head notes –H.

Discharge petition dated 30.01.2017 filed on behalf of accused Benoy Tamang @ Binoy Tamang, Col. Ramesh Alay, Devendra Sharma, Dinesh Theeng and Pemba Tshering @ Ola is taken up for hearing and also hearing on the point of consideration of charge.

Ld. Lawyer for the petitioners has submitted that with the exception of petitioner Pemba Tshering @ Ola, the other petitioners are also in the same footings as the previous petitioner/ accused Bimal Gurung and most of the allegations against them are also a copy paste allegation against the accused Bimal Gurung. Moreover, the other main allegation against the above petitioners are that at the relevant time of incident they were in telephonic contact with the other co-accused at Darjeeling but this allegation also cannot be substantiated as merely the CDR is produced and which cannot prove anything save and except calls have been made. Moreover, it has also come to light that the top leaders of the GJMM were under telephonic surveillance but no such evidence of telephonic intercepts is forthcoming from the prosecution side. 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.

At this stage the Id. Senior Lawyer for the accused persons namely Subhas Tamang & 19 others prays for adjournment on the ground stated therein.

Heard. Perused the petition. Considered.

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Prayer for adjournment is allowed even though discharge prayer of 28 out of 48 accused persons could be completed.

It is now 3.00 p.m., but no compliance report in respect of the order communicated vide memo no. 4126-S dated 03.08.2017, is received from the Commissioner of Police, Howrah Commissionerate with regard to the petition dated 03.8.2017 filed by the accused Puran Thami and Bhanu Rai, wherein the allegation of abduction by the police personnel from near Howrah Station and subjugation to interrogation, detention and threat for implication in false cases, following which the petitioners felt harassed by the police. This non-compliance and silence on the part of the police from the Howrah Commissionerate is understood to mean as acquiescence to the allegation made against them. Therefore, the State Police including the Howrah Commissionerate is hereby directed not to harass the petitioners/ accused persons of this case and if necessary, obtain permission from this court prior to engaging the accused persons of this case in any form of interrogation etc.

Inform all concerned by sending a copy of this order to the D.G.P., West Bengal and Commissioner of Police, Howrah Commissionerate.

To date i.e. 10.8.2011 for hearing discharge petitions of the remaining accused persons and also hearing on the point of consideration of charge.

D/C. by me.

Sd/-

Chief Judge  
City Sessions Court, Calcutta.

Sd/-

Chief Judge  
City Sessions Court, Calcutta.