

**SC 128 OF 2013**

**Order no. 103 Dated 28.08.2017**

Today is fixed for consideration of charge, report and hearing of the petition filed by accused Kishmat Chhetri, regarding de-freezing the bank account.

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

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

Accused 1) Jiten Tamang, 2) Smt. Asha Gurung, 3) Pemba Tshering Ola, 4) Roshan Giri, 5) Binay Tamang, 6) Sushma Rai, 7) Dinesh Theeng, 8) Devendra Sharma, 9) Dipen Malay, 10) Tilak Rai, 11) Babita Ganguly, 12) Naresh Rai, 13) Prabin Subba, 14) Sunil Rai, 15) Subhash Tamang, 16) Pradeep @ Bhupendra Pradhan, 17) Prasant Chhetri @ Yogen, 18) Col. Ramesh Allay and 19) Ashis Tamang are absent.

Ld. Advocates for the above named accused persons filed two 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.

Another petition also filed by the ld. Advocate on behalf of accused Roshan Giri & 42 others along with the certified copy of order dated 16.08.2017, passed by the Hon'ble Apex Court in Transfer Petition (Criminal) No. 238 of 2017, praying for selecting the venue of video conferencing at the premises of District & Sessions Judge's Court at Darjeeling or at any other place in the City

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of Darjeeling and also direct the prosecuting agency to set up infrastructure facilities for video conferencing, therein, in due course as per the Hon'ble Apex Court's order.

Both the petitions are taken up together for disposal.

Ld. Lawyer for the accused persons has submitted that in view of the directions, passed by the Hon'ble Supreme Court in Transfer Petition (Criminal) no. 238 of 2017, this court had been directed to hold the trial of Sessions case no. 128 of 2013, mainly by video conferencing for which facilities should be duly set up at Calcutta and Darjeeling. Since, this court has been entrusted, for locating the venue of such video conferencing in the city of Darjeeling, the same should be done and the necessary infrastructure be set up and in this regard the court of the sessions judge, Darjeeling would also be the most suitable venue for conducting the trial of this case, by video conferencing. It has also been submitted that the above process would entail certain time thus, the instant case should be adjourned and the petitioners who are absent today, should also be condoned for their absence, for the above reason as well as the fact that there is a flood situation in north Bengal and also two petitioners are seriously ill and one petitioner is busy with some administrative work.

Ld. Spl. P.P. on the other hand has admitted that the video conferencing facility needs to be set up on a location to be identified by this court, in Darjeeling, but has raised strong objections, against the absence of all the accused persons, on the ground that this court's order had been violated and for such violation, this court had already directed that coercive methods, would be applied, in the previous order and also that for the framing of charge the video conferencing would not be applicable as it was meant for trial only.

After hearing both the sides and on perusal of the Hon'ble Supreme Court's order, passed in Transfer Petition (Criminal) no. 238 of 2017, it transpires that the Hon'ble Supreme Court, had agreed to the proposal made by the Id. Counsels, on behalf of the CBI and the State of West Bengal, to hold the trial in the instant case mainly by video conferencing, pending before this instant

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court and to set up facilities in the instant court as well as in Darjeeling. The video conferencing facilities already existing in this court was replenished by providing bigger monitor screen, for the benefit of the Id. Advocates and also by providing speaker facilities for clarity of the vocals, to be made from this side of the court room, as well as providing one high resolution camera and thus the video conferencing facility, at this end has been completed. Since the sessions court, Darjeeling has an existing facility, for video conferencing, the same needs to be set up in the manner, to provide clarity of vocals and visuals. Therefore, the Id. Sessions Judge, Darjeeling be intimated with regard to the urgency of the holding trial, by video conferencing to expedite in whatever manner, to provide such facility as early as possible, so that a date be fixed for framing of charge. In this regard it needs to be iterated that it is settled principals of law that the trial starts from framing of charge and therefor the accused persons need to be present in court, whether at Darjeeling or at Calcutta for the framing of charge, by way of video conferencing. The question that has arisen during the hearing today is whether all the accused persons are covered by the order of the Hon'ble Supreme Court, in the above mentioned transfer petition. In this regard the Hon'ble Supreme Court while disposing the above petition has directed this court to hold the trial “**mainly by video conferencing**” and had also left the option before the trial judge with regard to the necessity of the physical presence of a particular witness or accused before the court at Calcutta, although with specified order and prior intimation, indicating that the trial by video conferencing facility would be the rule and therefore by such analogy, would mean to include all the accused persons and not only the petitioners of the transfer petition.

Under the circumstance the prayers u/s. 317 of the Cr.P.C. also stands allowed with the direction to follow the Hon'ble court's direction in this regard.

Ld. Spl. P.P. is present and files a report regarding the de-freezing the bank account of accused Kishmat Chhetri and submits that the S/B account of Kishmat Chhetri lying with SBI Darjeeling has not been relied upon by the prosecution in this case. In other words, it means that the attachment of the above S/B account lying with SBI Darjeeling does not appear to be necessary and

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therefore the Branch Manager, State Bank of India, Main Branch, Darjeeling is directed to release the S/B account no. 10833458936, which has been attached in this case, vide the order of Id. CJM, Darjeeling being no. 24 dated 04.09.2010.

Extract of this order be sent to the Branch Manager, State Bank of India, Main Branch, Ladenla Road, Darjeeling for necessary compliance.

A copy of this order be also sent to the Ld. Sessions Judge, Darjeeling for necessary information and action and to intimate this court as to when such facility would become workable by the date fixed.

To 12.09.2017 for intimation by the Ld. Sessions Judge, Darjeeling.

D/C. by me.

Sd/-

Chief Judge  
City Sessions Court, Calcutta.

Sd/-

Chief Judge  
City Sessions Court, Calcutta.