

**SC 128 OF 2013**

**Order no. 107 Dated 10.11.2017**

Today is fixed for production of the accused and report.

Total 47 accused on bail are absent by petition made by representative u/s. 317 of Cr.P.C. The prayer for representation u/s. 317 of Cr.P.C is allowed.

Another accused Pemba Tshering Ola is produced from Siliguri Correctional Home on the strength of production warrant issued by this court on 24.10.17. The said accused is on bail in connection with this case.

It appears to me that this court called for one report from the Executive Engineer, PWD, IT Division, Kolkata as well as Principal Secretary, Judicial Department, Government of West Bengal, Writers Building's, Kolkata, but no report has been received by this court.

Ld. Spl. P.P on behalf of State and ld. Advocates for the accused are present and accused Pradeep @ Bhupendra Pradhan and Jiten Tamang are absent without any step and found absent on call.

Surety is directed to produce the accused Pradeep @ Bhupendra Pradhan and Jiten Tamang on the next date.

However, considering the submission of ld. P.P and ld. Advocates for the accused it seems to me that the case should be fixed on 15.11.17 for report as this court is in-charge of ld.Chief Judge, City Sessions Court, Calcutta.

Accordingly, fix 15.11.17 for production and report.

Let a copy of the order be again sent to the Executive Engineer, PWD, IT Division, Kolkata and Principal Secretary, Judicial Department, Government of West Bengal, Writers Building's, Kolkata for information with a request to submit the report by the next date fixed positively.

The accused Pemba Tshering Ola is remanded to J.C till date.

Office to take step.

D/C. by me.

Chief Judge in charge  
City Sessions Court, Calcutta

Chief Judge in charge  
City Sessions Court, Calcutta

submitting a report with regard to the developments regarding video conferencing facility to be set up in the court of the Ld. Sessions Judge, Darjeeling.

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 Chhettri, 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, 28) Edwin Sanchabir Subba, 29) Jiten Tamang, 30) Smt. Asha Gurung, 31) Roshan Giri, 32) Binay Tamang, 33) Sushma Rai, 34) Dinesh Theeng, 35) Devendra Sharma, 36) Dipen Malay, 37) Tilak Rai, 38) Babita Ganguly, 39) Naresh Rai, 40) Prabin Subba, 41) Sunil Rai, 42) Subhash Tamang, 43) Pradeep @ Bhupendra Pradhan, 44) Prasant Chhettri @ Yogen, 45) Col. Ramesh Allay and 46) Ashis Tamang are absent.

Ld. Advocates for the above named accused persons filed three petitions under section 317 Cr.P.C., praying for permission to represent the accused persons.

Ld. Spl. P.P on behalf of State is present by filing hazira.

Ld. Advocate files a petition on behalf of accused Pemba Tshering Ola after serving the copy to the Ld. Spl. P.P and stating that the above mentioned accused was arrested from a Hotel near New Delhi by CID West Bengal, on 20.09.2017 in c/w G.R 229/17 arising out of Sadar (Darjeeling) P.S case no. 115/17 and he was produced before the Ld. ACJM, Siliguri and presently is in judicial custody and kept in the Siliguri Correctional Home and also prayed for passing necessary order for production of the accused Pemba Tshering Ola before this court.

Since the accused Pemba Tshering Ola is in custody, in connection with the abovementioned case, as such issue production warrant against the abovementioned accused person.

A report has been received from Ld. District Judge, Darjeeling by Fax bearing letter no.1867/E dated 23.10.2017 and stating as follows :-

*OFFICE OF THE DISTRICT JUDGE, DARJEELING*

*No.1867/E*

*Dated: 23<sup>rd</sup> day of October, 2017*

*From : The District Judge  
Darjeeling*

Contd....

Contd.. Order no. 106 dated 24.10.2017

To : The Ld. Chief Judge,  
City Sessions Court,  
Calcutta

Reference: Your Honour's Office Letter No.4987-S, dated 18-09-2017  
relating to order No.105, dated 18-09-2017 passed in S.C.  
No.128 of 2013.

Respected Sir,

Without entering into the details of our earlier correspondence, I would like to highlight the main issues which have revealed from the order dated 18-09-2017 passed in Sessions Case no.128 of 2013 by the Ld. Chief Judge, City Sessions Court, Calcutta.

The existing difficulties and infra-structural shortcomings brought to the notice of the Ld. Chief Judge, City Civil Court, Calcutta could not melt the ice and as a result thereof, Your Honour was pleased to suggest to proceed with the trial through video conferencing by utilizing the Court room of Sessions Judge, Darjeeling and in giving such suggestion, Your Honour was not unmindful to focus repeatedly upon the mandate of the Hon'ble Apex Court.

Be that as it stands in exchange of words, fact remains that the trial must be ensured through video conference from the Ejlash of City Sessions Court, Calcutta to the Court room of Sessions Judge, Darjeeling. In Implementing the direction of Hon'ble Supreme Court of India, I have involved Executive Engineer (PWD), Siliguri I.T. Division, Siliguri and according a joint inspecting accompanied with N.I.C. Office has been held at the Court room of Sessions Judge, Darjeeling. The Enquiry Report and estimated expenditure has been supplied by the authority which is annexed herewith.

As per guideline of Hon'ble Supreme Court's direction as well as request of Ld. Chief Judge, City Sessions Court, Calcutta for overseeing the formation of video conferencing facility at the Court room of Sessions Judge, Darjeeling, the following issues are required to be set at rest prior to the initiation of development of infra-structure, as proposed.

- 1) So long the trial of Sessions Case No.128 of 2013 shall continue day-to-day utilizing the Court room of Sessions Judge, Darjeeling whether during the period of trial, Sessions judge, Darjeeling shall remain idle at his chamber allowing all the judicial proceeding of the Sessions Court, Darjeeling to remain stopped?

A clear idea/suggestions/guideline is to be taken from the Hon'ble High Court, Calcutta and communication of such guideline/suggestion/idea shall be given to the District & Sessions Judge, Darjeeling accordingly.

- 2) As per report of the Executive Engineer (PWD) Siliguri, I.T. Division, Siliguri, in order to improve the better clarification of visuals and vocals, the same infra-structure is required to be put in at the Court room of ld. Chief Judge, City Sessions Court, Calcutta and in this regard, I would like to know whether such input, as per report is still existing in the Court room of Ld. Chief Judge, City Sessions Court, Calcutta.

Contd..

Contd.. Order no. 106 dated 24.10.2017

*In order to support the clarity of video and audio system, provisions of three cameras (02 number of PTZ Pro-II and 01 N.I.C. LOGITTECH conference scan) have been recommended by the I.T. Electrical Division.*

*After installation of infra-structural support at both end, a comprehensive rehearsal and reciprocal trial is required to minimize the error of video conference in between two Districts.*

- 3) *As per order of Hon'ble High Court as well as the mandate of the Hon'ble Apex Court, the concerned trial has to be entrusted upon the Court of Ld. Chief Judge, City Sessions Court, Calcutta and the Court of Sessions Judge, Darjeeling is holding the supportive functionary by lending the Court room of Sessions Judge at Darjeeling along with infra-structural facility for video conference. So, in that perspective, initiative of obtaining the administrative approval and getting the allotment of fund, as per estimate given, rests on the shoulder of Ld. Chief Judge, City Sessions Court, Calcutta. In that perspective also Ld. Chief Judge, City Sessions Court is requested to move the Govt. of West Bengal, Judicial Department for providing the allotment and administrative approval in favour of (P.W.D.), Electrical I.T. Division, Siliguri for providing requisite infra-structure as per report to ensure the best possible result to video conferencing trial.*

*So, I humbly appeal before Your Honour to settle these issues at first with a clear finding and to enlighten this Court about points No.1 to 3 as early as possible, so that I may take initiative to involve the(P.W.D.) Electrical I.T. Division, Siliguri to work out the job as expeditiously as Your Honour so desires.*

*Yours faithfully,*

*Encl: Report and Estimate supplied  
by Executive Engineer (PWD)  
Siliguri I.T. Division  
Siliguri.*

*(P.K. Bhattacharjee)  
District Judge,  
Darjeeling*

From the letter sent by the Ld. District & Sessions Judge, Darjeeling, the Ld. Sessions Judge, Darjeeling has raised a pertinent point as to the procedure to be followed while the video

conferencing of the instant case is in progress, and the role of the Ld. Sessions Judge, Darjeeling during that period while the video conferencing is in progress. It is a fact that the Ld. Sessions

*Report: This estimate has been prepare to meet the probable cost rupees after visit and site survey with Hon'ble District Judge, Darjeeling and technical person of NIC Darjeeling we decided to propose 4 MBPS leased line in minimum configuration for smooth running of video conferencing but previously installed leased line is only 2 MBPS which is not sufficient. On 24.10.2017 we proposed for a 4 MBPS and in the same as*

*hardware and software system we provided higher size of configuration but previously installed software does not support the same and the system is to be connected at point to point connection that means the controlling authority will also use same hardware for this reason we provide the probable item which is important for this installation for the Court room of District Court Darjeeling. This estimate is very important for administrative approval.*

duties, but this anomaly or problem can be addressed at a later date after the trial dates are fixed and in any case the mandate of the Hon'ble Apex Court has to be implemented, even if the Ld. Sessions Judge, Darjeeling has to remain in his chamber, during the period the video conferencing trial is in progress.

As to the latter part of the letter, wherein it has been provided that the Executive Engineer, PWD, Siliguri, IT Division had opined, that a similar set up has to be provided in the court of the undersigned and for this reason the Executive Engineer, PWD, IT Division, Kolkata needs to be informed by sending a copy of this order, so that the facility provided in the court of the Ld. Sessions Judge, Darjeeling matches with the facility to be provided in this court. In this regard, the Executive Engineer, PWD, IT Division, Kolkata is also directed to implement as mentioned above, as it is the mandate of the Hon'ble Apex Court.

Since an estimate has been submitted by the Executive Engineer, PWD, IT Division, Siliguri the funds for the same as well as for this court needs to be released by the Government and therefore a copy of this order needs to be sent to the Principal Secretary, Judicial Department, Government of West Bengal, Writers Building's, Kolkata for releasing the necessary funds needed for the above project.

Copy of this order be sent to the Ld. District & Sessions Judge, Darjeeling, the Executive Engineer, PWD, IT Division, Kolkata and Principal Secretary, Judicial Department, Government of West Bengal, Writers Building's, Kolkata for information and necessary action.

Office to comply the same.

Fix 10.11.2017 for production and report.