

SESSIONS CASE NO 128 OF 2013

CNR-WBCS01-000139-2013

Present: Sri Soumendra Nath Das

Chief Judge, City Sessions Court, Calcutta

J.O. CODE NO.WB01132

Order no.186 dated 26.07.2024

Today is fixed for appearance of all the accused persons and framing of charge and also for appearance of the accused person namely, Bimal Gurung.

Ld. Special P.P for CBI is present by filing hazira.

Ld. Advocates for the accused persons are present.

Hazira filed on behalf of the widow of the deceased namely Bharati Tamang.

Out of (47) Accused persons, (46) Accused persons namely 1.Prashant Chhetri @ Yogen Rai, 2.Asish Tamang, 3.Sudesh Rai Majhi, 4.Sunil Rai, 5.Dipen Malay, 6. Arun Moktan, 07. Sanjay Tamang, 08. Bhanu Rai, 09. Kamal Singha, 10.Dawa Sangey Sherpa, 11.Suraj Singh, 12. Amol Lama, 13. Prabin Subba, 14.Goutam Tamang, 15.Ruden Sada Lepcha, 16. Edwin Sanchabir Subba, 17.Khagen Tamang, 18.Ranjit Rai, 19.Alok Kanta Mani Thulung @ Rai, 20.Kesav Raj Pokhrel, 21.Puran Thami, 22.Kismat Chhettri, 23. Dinesh Gurung @ Karate Kaila, 24.Tenzing Khambache, 25.Naresh Rai, 26.Nagendra Pradhan, 27.Kesar Rai, 28. Binoy Tamang, 29.Dinesh Theeng, 30. Asha Gurung, 31.Sushma Rai, 32.Sandhya Gurung, 33.Urmila Rumba, 34.Anita Lakhandri, 35. Kabita Dahal, 36.Babita Ganguly, 37.Sona Sherpa, 38. Roshan Giri, 39. Jiten Tamang, 40. Pradeep @ Bhupendra Pradhan, 41. Harka Bahadur Chettri, 42. Rabin Subba, 43. Pemba Tshering @ Ola and 44. Devendra Sharma on Court Bail are found absent on calls.

Ld. Advocates for the above named accused persons files four separate petitions and prays for representing the above named accused persons u/s 317 of the Cr.P.C through Ld. Advocates in their absence on the ground stated therein.

Heard both sides.

The prayer is considered and allowed for this day.

Ld. Advocates for the above mentioned 46 accused persons are allowed to be represented through their respective Ld. Advocates u/s 317 of Cr.P.C for this day with a direction to all the accused persons to appear before this court on the next date fixed positively.

Accused person namely Subhas Tamang is found absent on repeated calls.

None take steps on behalf of the accused person namely Subhas Tamang.

It is now 12.00 p.m.

This Court has no other alternative but to issue notice upon the sureties to produce the accused Subhas Tamang before this court on the next date fixed positively, in default necessary order will be passed in accordance with the law.

S.R of notice in respect of accused person namely Bimal Gurung is received. Let it be kept with the record.

Accused person namely Bimal Gurung is present with his Ld. Advocate by filing hazira along with fresh Vakalatnama.

Let it be kept with the record.

Ld. Advocate for the widow of the deceased namely Bharati Tamang files a petition after serving copies to all the parties praying for a direction upon the respondent no. 2 to produce the original hard disc containing the voice data record of the intercepted telephone calls obtained by the Intelligence Bureau, West Bengal in terms of the order of the Hon'ble Supreme Court of India passed in Writ petition (criminal) 159 of 2012 for proper adjudication of this case.

Let it be kept with the record.

Ld. Advocate for the widow of the deceased namely Bharati Tamang files another petition praying for an adjournment today stating that the petition filed may be fixed for hearing at the first instance by this court before framing of charge so that additional penal sections, if any, may be incorporated at the time of framing of charge against these accused persons by this Court.

Ld. Advocate for the accused person namely Bimal Gurung @ Daju files another petition before this court praying for time on the ground that he has challenged the order of the Hon'ble High Court at Calcutta passed in two revisional applications being CRR No 3685 of 2017 and CRR No 50 of 2018 before the Hon'ble Supreme Court of India vide SLP (Crl) no. 9688-9689 of 2024 and the same is listed today for hearing as Item no. 33 before Court no 14 and the same is likely to be heard and admitted today.

Ld. Counsel for the accused person further contended that if the Special Leave Petition is admitted before the Hon'ble Apex Court then this Court will be barred from framing the charges against accused person Bimal Gurung along with the other accused persons as the framing of charges against accused person namely Bimal Gurung in terms of the order of the Hon'ble Calcutta High Court is the subject matter of challenge in the said special writ petition bearing no. SLP (Crl) no. 9688-9689 of 2024 before the Hon'ble Supreme Court of India.

Ld. Spl. P.P for CBI and the Ld. Advocate for the widow of the deceased raised no objection on the point of adjournment.

Heard both sides. The prayer for adjournment is considered and allowed.

Fix. **21.08.2024** for appearance and hearing of the petition dated 26.07.2024 filed by the Ld. Advocate for the widow of the deceased and also bringing updated order from the Hon'ble Supreme Court of India.

Written Objection if any in the meantime.

As the accused person namely Bimal Gurung is present in person before this Court in terms of the order no. 185 dated 28.06.2024 passed by this Court, he is taken into custody.

At this stage, Ld. Advocate for the accused person namely Bimal Gurung files a petition praying for bail afresh after serving the copy to the prosecution side.

Now the instant bail petition on behalf of accused namely Bimal Gurung is taken up for hearing.

Ld. Advocate for the accused/petitioner submits that this accused/petitioner has been discharged from this case by order no. 100 dated 17.08.2017 passed by this Court and the said order of discharge of this accused/petitioner was challenged before the Hon'ble High Court, Calcutta by the Central Bureau of Investigation and another and by an order dated 13.06.2024 the Hon'ble High Court at Calcutta has been pleased to set aside the order of discharge of this accused/petitioner in CRR no 3685 of 2017 with CRR No 50 of 2018 whereby the Hon'ble High Court at Calcutta has directed this Court to frame charge against Bimal Gurung with other accused persons and to proceed with this case according to the law and as per direction of the Hon'ble Supreme Court of India.

Ld. Advocate for the accused/petitioner further submits that pursuant to grant of anticipatory bail by the Hon'ble High Court Calcutta in CRM No. 5221 of 2015, the accused/petitioner had previously surrendered before this Court and he was also enlarged on regular bail by furnishing bail bonds by this Court by its order no 64 dated 20.12.2016 in this case.

Ld. Advocate for the accused/petitioner further submits that the accused/petitioner has accordingly appeared before this Court and also prays for fresh bail as this accused/petitioner has been granted bail by the Hon'ble Court at Calcutta u/s 438 of the Cr.P.C by its order dated 14.12.2016.

Ld. Spl. P.P for CBI submits that this accused/petitioner was granted bail by the Hon'ble High Court at Calcutta vide order dated 14.12.2016 passed in CRM No. 5221 of 2015 and this accused/petitioner was all along on bail since then and he leaves the matter upon the discretion of this Court.

Heard both sides.

Perused the case record and the petition of the accused/petitioner including the order of the Hon'ble High Court at Calcutta dated 14.12.2016 passed in CRM 5221 of 2015 with CRM No 5222 of 2015 with CRM No 5223 of 2015 with CRM No 5224 of 2015 with CRM No 5294 of 2015 with CRM No 5295 of 2015.

It appears from the case record that this accused/petitioner was already granted bail by the Hon'ble High Court, Calcutta vide C.R.M no. 5221 of 2015 on 14.12.2016 and thereafter this accused/petitioner surrendered before this Court and he was granted bail and his bail bond was accepted vide order no. 65 dated 20.12.2016.

I also find that thereafter this accused/petitioner was discharged from this case u/s 227 of the Cr.P.C vide order no. 100 dated 17.08.2017 passed by this Court.

I also find that this accused/petitioner namely Bimal Gurung has surrendered before this Court today after receiving the notice from this court.

Ld. Counsel for the CBI has drawn the attention of this Court to the order of the Hon'ble High Court, Calcutta dated 14.12.2016 passed in CRM 5221 of 2015 with CRM No 5222 of 2015 with CRM No 5223 of 2015 with CRM No 5224 of 2015 with CRM No 5294 of 2015 with CRM

No 5295 of 2015 wherein this court has been directed to release the accused person Bimal Gurung on regular bail with certain terms and conditions if he surrenders before this Court.

I also find from the submission of the Ld. Counsel for the CBI that they have not taken any steps for cancellation of bail of this accused/petitioner till date and therefore the order of the Hon'ble Court dated 14.12.2016 is still in force.

Considering all these aspects of the matter and also considering the submissions of both sides, the prayer for bail of this accused/petitioner Bimal Gurung is **allowed**.

Accused person namely **Bimal Gurung** may find bail on executing a bond of **Rs. 10,000/-** with two sureties of **Rs. 5,000/- each (out of which one must be local)** subject to the satisfaction of this court on the following conditions :-

- 1) The accused/petitioner is directed to submit his residential address where he shall reside during the trial and his mobile phone numbers if any be furnished before this Court as well as before the Investigating Officer within seven days from the passing of this order.
- 2) The accused/petitioner is also directed to appear before this Court on each and every date of trial.
- 3) The accused/petitioner is further directed that since one day prior to the date fixed for framing of charge, this accused/petitioner shall remain present within the jurisdiction of Kolkata police and this accused/petitioner shall not leave the jurisdiction of Kolkata police until the trial is over, except with prior leave of this Court.
- 4) The accused/petitioner is further directed to deposit his passport, visa if any before the Investigating Officer of this case within seven days from the passing of this order.

The Investigating Officer of this case is directed to submit a report with regard to the conditions of bail as imposed by this Court and complied by the accused person on the next date fixed positively.

Todate i.e. 21.08.2024 for appearance of the accused persons and hearing of the petition dated 26.07.2024 filed by the Ld. Advocate for the widow of the deceased.

To-date for appearance of all the accused persons before this Court.

Let a copy of this order be sent to the Ld. CMM, Calcutta for information and compliance.

Let a copy of this order be sent to the I.O of this case for information and necessary compliance.

D/C by me.

Sd/-

Sd/-

Chief Judge

City Sessions Court, Calcutta

Chief Judge

City Sessions Court, Calcutta