

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.188 dated 21.08.2024

Today is fixed 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 in connection with the order dated 26.07.2024 passed by the Hon'ble Supreme Court of India in SLP (Crl) Nos. 9688-9689/2024.

To-date is also fixed for filing affidavit by the accused person namely Bimal Gurung.

Ld. Counsel for the widow of the deceased, Ld. Advocates for the accused persons and the Ld. Special P.P. for the C.B.I. are present.

Out of (48) Accused persons, (40) Accused persons namely 2. Prashant Chhetri @ Yogen Rai, 3.Asish Tamang, 4.Sudesh Rai Majhi, 5.Sunil Rai, 08. Arun Moktan, 09. Sanjay Tamang, 10. Bhanu Rai, 11. Kamal Singha, 12.Dawa Sangey Sherpa, 13.Suraj Singh, 14. Amol Lama, 15. Prabin Subba, 16.Goutam Tamang, 17.Ruden Sada Lepcha, 18. Edwin Sanchabir Subba, 19.Khagen Tamang, 20.Ranjit Rai, 21.Alok Kanta Mani Thulung @ Rai, 22.Kesav Raj Pokhrel, 23.Puran Thami, 24.Kismat Chhettri, 25. Dinesh Gurung @ Karate Kaila, 26.Tenzing Khambache, 28.Nagendra Pradhan, 29.Kesar Rai, 32.Dinesh Theeng, 34.Sushma Rai, 35.Sandhya Gurung, 36.Urmila Rumba, 37.Anita Lakhandri, 38. Kabita Dahal, 39.Babita Ganguly, 40.Sona Sherpa, 41. Roshan Giri, 42) Jiten Tamang, 43) Pradeep @ Bhupendra Pradhan, 45. Rabin Subba, 46. Pemba Tshering @ Ola, 48. Devendra Sharma and Bimal Gurung on Court Bail are present in Court by filing their respective haziras.

The accused persons namely 1. Subhash Tamang, 6. Tilak Rai, 7.Dipen Malay, 27.Naresh Rai, 30. Binoy Tamang, 31. Col. Ramesh Aley, 33 Asha Gurung and 44. Harka Bahadur Chettri on Court bail are found absent on calls.

Two separate petitions have been filed on behalf of the accused persons namely 6. Tilak Rai, 7.Dipen Malay, 27.Naresh Rai, 30. Binoy Tamang, 31. Col. Ramesh Aley, 33. Asha Gurung and 44. Harka Bahadur Chettri praying for allowing their Ld. Counsels to represent the Accused persons u/s 317 of Cr.P.C. on the ground stated therein.

Heard all sides on the point of condoning absence of the accused persons namely 6. Tilak Rai, 7.Dipen Malay, 27.Naresh Rai, 30. Binoy Tamang, 31. Col. Ramesh Aley, 33 Asha Gurung and 44. Harka Bahadur Chettri.

The prayers are considered and allowed.

The Accused persons namely 6. Tilak Rai, 7.Dipen Malay, 27.Naresh Rai, 30. Binoy Tamang, 31. Col. Ramesh Aley, 33 Asha Gurung and 44. Harka Bahadur Chettri are allowed to be represented through their Ld. Counsels u/s 317 Cr. P.C.

It appears from the case record that vide order no.186 dated 26.07.2024 passed by this Court Ld. Chief Metropolitan Magistrate, Calcutta was directed to issue notice upon the sureties to produce the accused person namely Subhash Tamang today i.e. on 21.08.2024.

Neither the accused person namely 1. Subhash Tamang is present today, nor the accused person namely 1. Subhash Tamang is produced by the concerned sureties.

None turns up on behalf of the accused person namely 1. Subhash Tamang.

In view of the above fact, Ld. Chief Judicial Magistrate, Calcutta is further directed to instruct the respective surety(s) to ensure production of the accused person namely 1. Subhash Tamang on the next date fixed positively i.d. necessary order will be passed in accordance with law.

Ld. Counsel for the accused person namely, Bimal Gurung files a petition supported by an affidavit stating that the accused/petitioner namely, Bimal Gurung does not possess any passport nor any visa and therefore prays for accepting the compliance report in terms of order no.187 dated 01.08.2024 passed by this Court.

Let the same be kept with the record.

Ld. Counsel for the accused person namely Bimal Gurung files another petition along with a copy of order dated 26.07.2024 passed by the Hon'ble Supreme Court of India in connection with Petitions for Special Leave to Appeal (Crl.) Nos.9688-9689/2024 stating that challenging the order dated 13.06.2024 passed by the Hon'ble High Court at Calcutta the accused/petitioner namely, Bimal Gurung has preferred a special leave petition vide SLP (Crl.) nos.9688-9689 of 2024 before the Hon'ble Supreme Court of India and upon hearing the same on 26.07.2024 the Hon'ble Supreme Court of India was pleased to admit the Special Leave Petition and directed for issuance of notice and also keeping the matter returnable after 4 weeks and therefore, the Ld. Counsel prays for adjournment accepting and or taking on record the petition filed today on behalf of the accused/petitioner along with the copy of order dated 26.07.2024 of the Hon'ble Supreme Court of India.

Perused the copy of order dated 26.07.2024 in SLP (Crl.) nos.9688-9689 of 2024 wherein the Hon'ble Supreme Court of India has been pleased to observe as follows:

“Issue notice, returnable after four weeks.

Dasti service, in addition, is permitted.”

Let the petition be kept with the record.

Ld. Advocate for the CBI files a report regarding the compliance of the condition of bail as imposed on accused Bimal Gurung vide order dated 26.07.2024.

Let it be kept with the record.

Ld. Advocate for the CBI files another report regarding reply to the petition filed on behalf of Mrs. Bharati Tamang wife of the deceased Madan Tamang on 26.07.2024 in terms of the liberty granted by the Hon'ble Supreme Court of India vide its order dated 10.05.2024 passed in WP (Crl) 159 of 2012.

Let it be kept with the record.

I find that no stay order has been granted by the Hon'ble Supreme Court of India in SLP (Crl) Nos. 9688-9689/2024 and therefore there is no legal impediment to proceed with the hearing of the petition dated 26.07.2024 filed by the Ld. Advocate for the widow of the deceased

The petition dated 26.07.2024 filed by the Ld. Advocate for the widow of the deceased along with the reply filed today by the CBI are now taken up for hearing.

Ld. Counsel for the C.B.I. files photocopies of call transcript published in Indian Express on 15.07.2010 through firisti.

Ld. Advocate for the widow Bharati Tamang files one status report dated 18.04.2017 filed before the Hon'ble Supreme Court of India in Criminal Misc. Petition no. 1738 and 4129/2017.

Let the same be kept with the record.

Heard all sides at length in full upon the petition dated 26.07.2024 filed by the Ld. Advocate for the widow of the deceased Bharati Tamang praying for issuance of direction upon the Investigating Agency for production of the transcripts of the call intercepts of the accused persons from the investigating agencies i.e. Intelligence Bureau, Government of West Bengal relating to the murder of Madan Tamang.

Fix **27.08.2024** for appearance of all the accused persons, passing order in respect of the petition dated 26.07.2024 filed by the Ld. Advocate for the widow of the deceased.

To-date i.e. 27.08.2024 is also fixed for production of the accused person namely, Subhash Tamang by the respective sureties.

At this stage, Ld. Counsel for the accused persons draws the attention of this Court with regard to the order passed by the Hon'ble Supreme Court of India on 16.08.2017 in Transfer Petition (Criminal) No. 238 of 2017 wherein the Hon'ble Supreme Court has directed this Court to hold the trial pending before this Court mainly by video conferencing facilities to be set up in Calcutta and Darjeeling unless this Court is of the opinion that physical presence of a particular witness or accused is necessary before the Court at Calcutta, he shall make a specified order to that effect giving sufficient time to the person to appear before the Court.

In the meantime, the Ld. Counsel for the C.B.I. is directed to file the correspondences made by CBI addressing the Intelligence Bureau, Government of West Bengal for supplying of the transcripts of the call intercepts of the accused persons.

To-date i.e. on 27.08.2024 for appearance of all the accused persons either in physical mode or in virtual mode.

To-date for taking steps by all the accused regarding their appearance.

Let a copy of this order be sent to the Ld. Chief Judicial Magistrate, Calcutta for information and necessary action.

D/C by me.

Sd/-
Chief Judge
City Sessions Court, Calcutta

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Chief Judge
City Sessions Court, Calcutta