

SESSIONS CASE NO.128 OF 2013  
CNR NO.WBCS01-000139-2013  
S.T. NO.01(03) OF 2020 (OLD)  
Present: Sri Soumendra Nath Das  
Chief Judge, City Sessions Court, Calcutta  
J.O. CODE NO.WB01132

Order no.189 dated 27.08.2024

Today is fixed for passing order in respect of the petition dated 26.07.2024 filed by the Ld. Advocate for the widow of the deceased.

Ld. Counsel for the widow of the deceased namely Bharati Tamang and Ld. Special P.P. for C.B.I. are present.

Ld. Counsels for the accused persons namely, 2.Prashant Chhetri @ Yogen Rai, 3.Asish Tamang, 4. Sudesh Rai Majhi, 5. Sunil Rai, 6. Tilak Rai, 7. Dipen Malay, 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, 27.Naresh Rai, 28.Nagendra Pradhan, 29.Kesar Rai, 30. Binoy Tamang, 31. Col. Ramesh Aley, 32. Dinesh Theeng, 33 Asha Gurung, 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, 44. Harka Bahadur Chettri, 45. Rabin Subba, 46. Pemba Tshering @ Ola, 48. Devendra Sharma and Bimal Gurung filed four separate petitions on behalf of the accused persons and prayed for allowing their Ld. Counsels to represent them u/s 317 of Cr. P.C. on the ground stated therein.

Heard all sides on the point of condoning absence and for representing them through their Ld. Counsels.

The prayers are considered and allowed.

The abovementioned accused persons are allowed to be represented through their Ld. Counsel u/s 317 Cr. P.C.

It appears from the case record that vide order no.188 dated 21.08.2024 passed by this Court Ld. Chief Judicial Magistrate, Calcutta was directed to issue notice upon the sureties to produce the accused person namely, Subhash Tamang today i.e. on 27.08.2024.

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.

A resolution is passed by the Local Bar Association to the effect that not to pass any adverse order in absence of the parties.

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.

Now the record is taken up for passing order in respect of the petition dated 26.07.2024 filed by the Ld. Advocate for the widow of the deceased.

Ld. Advocate on behalf of the widow of the deceased while advancing argument in support of the petition dated 26.07.2024 submitted that being dissatisfied by and aggrieved with the investigation conducted by the CBI in connection with the gruesome murder of her husband Madan Tamang since deceased on May 21, 2010, she was compelled to file a writ petition being Writ Petition [Crl.] No. 159 of 2012 before the Hon'ble Supreme Court of India for appropriate directions and orders praying for issuing a writ of mandamus or any other writ, order or direction in the nature of mandamus quashing the Charge Sheet No. 76 of 2010 submitted on 30.08.2010 by the CID, Homicide Squad, West Bengal along with supplementary Charge Sheet no. 04 (03) dated 20.08.2011 filed in GR case no. 148 of 2010 by the CBI on 20.08.2011 and the proceedings emanating therefrom pending before the Court of the Chief Judicial Magistrate, Darjeeling in Sessions Case no. 77 of 2010 and also for issuing a writ of mandamus for appointing an independent Special Investigation Team comprising of senior officers headed by competent persons or authority to conduct an investigation de novo into the conspiracy and gruesome murder of Madan Tamang on 21.05.2010 at Darjeeling and to take all necessary consequential steps thereto and for other reliefs.

Ld. Advocate on behalf of the widow of the deceased further alleged that the telephone conversations held between the accused Roshan Giri and the assailants at the spot and between the accused Bimal Gurung President of the Gorkha Janmukti Morcha and the accused Roshan Giri, General Secretary of the Gorkha Janmukti Morcha strongly indicates their culpability in the commission of the offences of murder of Madan Tamang and it prima facie goes to indicate their involvement in the said offence and further submitted that the said documents containing the transcripts of the telephone calls are very much necessary for proving the involvement of the said accused persons in the murder of Madan Tamang but the said transcripts of telephone conversation had been deliberately withheld from the prosecution side so that the same is suppressed and may not be produced before the Court with a view to exclude those leaders from this case and to establish their innocence.

Ld. Advocate on behalf of the widow of the deceased further contended that the information was leaked to the media about the official intercepts of the telephone conversations held between the accused Bimal Gurung, President of the Gorkha Janmukti Morcha and his General Secretary, Roshan Giri another accused and their local cadres just before and after the killing which were circulated and published in an article of national daily newspaper namely, Indian Express on 15.07.2010 just after the murder of the deceased Madan Tamang.

Ld. Advocate on behalf of the widow of the deceased further submitted that the CID, West Bengal had submitted the first charge sheet on 30.08.2010 and after investigation a supplementary charge sheet was submitted by the CBI on 20.08.2011 and finally the second supplementary charge sheet was filed on 29.05.2015 by the Deputy Superintendent, CBI, SCB, Kolkata in this case along with a status report before the Hon'ble Supreme Court of India in Criminal Miscellaneous Petition No. 1738 and 4129 of 2017, in Writ Petition (Criminal) No. 159/2012 in which it is evident that the CBI had done half-hearted effort by not examining the reporter and the editor of the newspaper namely, Indian Express in course of their investigation prior to filing the charge sheet by the CBI.

Ld. Advocate on behalf of the widow of the deceased further contended that though the Government of West Bengal was approached by the CBI officials to provide the entire call recordings and conversations thereto transacted on or before the date of incident between the accused persons but only the recordings beyond the date of incident were provided which lacks the integral ingredients in respect of the involvement of the accused persons and he prayed for issuing specific and strict directions upon the Intelligence Bureau and/or Crime Investigation Department, Government of West Bengal being the then investigating agency to produce the same before the Court for the purpose of fair trial.

At this juncture, Ld. Advocate on behalf of the widow of the deceased contented with regards to the rights to be enjoyed by the widow of the deceased during trial of the case and in support of her contention cited one Judgement passed by the **Hon'ble Supreme Court of India** reported in the case of **Jagjeet Singh and others Vs. Ashish Mishra @ Monu and Another** in **Criminal Appeal no. 632 of 2022** wherein it provides as follows :

*“23. It cannot be gainsaid that the right of a victim under the amended Cr.P.C. are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of 'State' in the proceedings, therefore, does not tantamount to according a hearing to a 'victim' of the crime.*

*24.1. First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.*

*24.2. Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.”*

In reply, Ld. Special PP for the Central Bureau of Investigation submitted that the CID and/or the Intelligence Bureau, State of West Bengal had intercepted the telephone calls and is having in their custody the hard disc containing voice recordings, written/printed transcripts/compact disc containing the voice intercepts of the leaders of Gorkha Janmukti Morcha being the accused persons along with the telephone call transcripts during the day of murder and also the telephone conversations held in between the accused persons on the previous day and during the day of murder of the husband of the petitioner and after taking charge of the investigation, the CBI demanded the hard disc in writing but the Intelligence Branch, State of West Bengal had informed that the same are not available with them because it was recorded in defective analogous system and cannot be retrieved.

Ld. Special PP for the Central Bureau of Investigation further argued that during the course of investigation a report had been published in an article of Indian Express on 15.07.2010 and therefore all efforts were made to examine the concerned reporter and editor of Indian Express and also to obtain the written/printed transcripts/compact disc containing the voice intercepts of the leaders of Gorkha Janmukti Morcha but they refused to provide the same and no cooperation was given to the investigating agency by the said editor and/or his team.

Ld. Special PP for the Central Bureau of Investigation further submitted that all steps were taken to ascertain whether the phone numbers are that of the top leaders of Gorkha Janmukti Morcha or not by sending several letters and requests to the Government of West Bengal and thereafter those details were provided and the Government of West Bengal admitted that some of the numbers were under official interception by the Intelligence Branch, Government of West Bengal but clarified that the said voice data records are not available with them.

Ld. Special PP for the Central Bureau of Investigation further contended that the CBI conducted the investigation in the best possible manner and had filed two supplementary charge sheets in the Court and serious efforts were made to obtain the original hard disc containing the transcripts of original intercepted call recordings during the course of investigation but the said hard discs were not made available and all other steps were also taken during the investigation and evidences collected are sufficient as oral evidences as well as documentary evidences to prosecute the accused persons. Hence, the allegation levelled by the petitioner/widow of the deceased against the investigation conducted by the CBI are baseless and not true.

Perused the petition dated 26.07.2024 filed by the Ld. Advocate for the widow of the deceased from where it reveals that Ld. Advocate on behalf of the widow of the deceased had prayed for issuing specific and strict directions upon the investigating agency/prosecution to obtain the vital material evidence and to produce the same before the Court for the purpose of fair trial and for unearthing the truth.

I also find from the solemn order dated 08.10.2013 passed by the Hon'ble Supreme Court of India in Writ Petition No (Crl) No 159 of 2012 in the case of Bharati Tamang Versus Union of India wherein the Hon'ble Apex Court has specifically observed that prima facie, we want to make a note of the existence of the transcripts, inasmuch as, even the prosecuting agency, namely the CBI does not dispute about its existence as well as its authenticity, though it is awaiting the outcome of the Forensic Report. I also find from the judgement of the Hon'ble Supreme Court of India that it is observed by the Hon'ble Court that *de hors* the reliability or otherwise of the transcripts of the intercepted conversation of some of the accused and the office bearers of GJMM, the availability of such transcripts is not in dispute. It has been further observed that the case of the CBI itself that the transcripts of the intercepts have been secured by it and that has been forwarded to the Forensic science laboratory and the report is awaited. It has been further observed by the Hon'ble Apex Court in its order and judgement dated 08.10.2013 that the contents of the transcripts which was initially published in the Indian Express Edition of 15<sup>th</sup> July 2010 allegedly reveals that it related to the period between 9:02 pm of 20<sup>th</sup> May 2010 to 5:12 pm of 21<sup>st</sup> May 2010. It is also observed that it is the further claim of the prosecution and the petitioner that the whole conversation was between the accused nos. 23, 13, 15 and respondent no. 10 as well as certain other persons all of whom are the party men of GJMM. It has also been observed by the Hon'ble Apex Court that the intercepted transcripts allegedly disclose that there was conversation between the persons about the manner in which the occurrence took place when the killing of Mr Madan Tamang took place around 10 am. On perusal of the Charge sheet no. 09/2015 dated 29.05.2015 as is reflected from order no 47 dated 29.05.2015, I find that it is categorically recorded therein that in course of investigation, it transpired that the Intelligence Branch of the Government of West Bengal was possessing the call intercepts of GJMM leaders and its cadres pertaining to 20.05.2010 and 21.05.2010 i.e day prior to the date of the incident and also of the date

of the incident. It has also been recorded that the CBI, New Delhi experts visited the office of the Intelligence Branch on 21<sup>st</sup> May, 2011 and they cloned the hard disc which was used for interception of calls of GJMM leaders and cadres during the relevant period. The clone of this hard disc was sent to CFSL, New Delhi for analysis and for extracting the relevant files containing the intercepts of telephonic conversations of various leaders.

I also find from the order dated 10<sup>th</sup> May 2024 passed in Writ Petition (Criminal) No 159 of 2012 in the case of Bharati Tamang Versus Union of India wherein liberty was given to the petitioner and the CBI to file appropriate application before this Court in respect of the prayers made by the Petitioner in para (e) of the I.A. No 1738 of 2017 in the light of the counter affidavit filed by the CBI. On perusal of the prayer (e) of I. A No 1738 of 2017, I find that it is prayed that a direction to the respondent no 2 be passed for obtaining the voice data record to produce the original hard disc containing the voice data record of the intercepted telephone calls obtained by the Intelligence Branch, West Bengal.

Considering the submissions made on behalf of the Ld. Advocate on behalf of the widow of the deceased and the Ld. Counsel for the CBI and after perusing the case record and the Judgement dated 08<sup>th</sup> October, 2013 passed in Writ Petition (CRL)No 159 of 2012 in the case of Bharati Tamang Versus Union of India and others and the directions of the Hon'ble Supreme Court of India in Writ Petition (Criminal) No 159 of 2012 by its order dated 10<sup>th</sup> May 2024, this Court thinks it fit and proper to pass necessary directions upon the CID and Intelligence Branch, Government of West Bengal to produce the written/printed transcripts/clone copy of compact disc containing the voice intercepts of the leaders of Gorkha Janmukti Morcha who are arraigned as accused persons before this Court in this case.

I also find from the CD that letters were issued by the CBI to the Home Secretary, Government of West Bengal; the ADG, Intelligence Branch, Government of West Bengal and ADG (Crime), CID, Government of West Bengal for handing over the voice data records intercepts of the calls of the accused persons but the said authorities did not hand over the same to the CBI for the purpose of thorough investigation.

Hence, the Inspector General of Police, Intelligence Branch, West Bengal and the ADG (Crime), Crime Investigation Department, Government of West Bengal are directed to produce the written/printed transcripts/and the clone copy of the original hard disc containing the voice intercepts of the leaders of Gorkha Janmukti Morcha for 20.05.2010 and 21.05.2010 in sealed cover on or before **10th September, 2024** positively before this Court for the ends of fair trial and to submit a compliance report therewith before the Court.

The Investigating Officer of this case shall approach the Office of Intelligence Branch, West Bengal at 13, Lord Sinha Road, Kolkata and shall communicate this Court's order for handing over the written/printed transcripts and clone copy of the original hard disc containing the voice intercepts of 20.05.2010 and 21.05.2010 of the leaders of Gorkha Janmukti Morcha being the accused persons in this case and the Inspector General of Police, Intelligence Branch, West Bengal and the ADG (Crime), Crime Investigation Department, Government of West Bengal shall render all cooperation and hand over the call transcripts and the clone copy of the original hard disc for proper adjudication of this criminal prosecution and for the ends of fair trial.

In view of such circumstances and the specific finding in the charge sheet that the Government of West Bengal had clarified that the said mobile numbers were under interceptions of IB, West Bengal and therefore it is very hard to believe that no transcripts of the telephone conversations of the accused persons are available with the Intelligence Branch, West Bengal or the CID, West Bengal for handing over the same to the CBI.

The Inspector General of Police, Intelligence Branch, West Bengal and the ADG (Crime), Crime Investigation Department, Government of West Bengal shall also submit a report before this Court as to when the telephones of the accused persons were seized by the investigating agency under proper seizure list as it has transpired from the charge sheet no. 09 of 2015 dated 29.05.2015 that Intelligence Branch of Government of West Bengal was possessing the call intercepts of GJMM leaders and its cadres pertaining to 20.05.2010 and 21.05.2010 and CFSL, CBI, New Delhi experts visited the office of Intelligence Branch, Siliguri on 21.05.2011 and they cloned the hard disc which was used for interception of calls of GJMM leaders and cadres during the relevant period.

The Investigating Officer of CBI is also directed to file a report before this Court as to whether CBI has taken any steps to seize the mobile phones from the CID, West Bengal or Intelligence Branch, West Bengal or from the accused persons and if at all made, the date when such seizure took place and the subsequent steps taken during investigation with regard to the seized phones of the accused persons.

Thus, the petition dated 26.07.2024 filed by the Ld. Advocate for the widow of the deceased is considered and **allowed** and thus, the same is disposed of on the observations made above.

To **20.09.2024** for appearance and framing of charge.

As the next date is fixed for framing of charge, all the accused persons are directed to remain physically present before this Court positively.

Todate i.e. **10.09.2024** for the compliance report from the Inspector General of Police, Intelligence Branch, West Bengal and the ADG (Crime), Crime Investigation Department, Government of West Bengal.

Todate i.e. **10.09.2024** also for the compliance report from the Investigating Officer, CBI so directed as above.

Todate i.e. **20.09.2024** also for bringing order from Hon'ble Supreme Court of India.

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

Let a copy of this order be sent to General of Police, Intelligence Branch, West Bengal through the IO of this case for compliance.

Let a copy of this order be sent to the ADG (Crime), Crime Investigation Department, Government of West Bengal through the IO of this case for compliance.

Let a copy of this order be sent to the IO of this case.

D/C by me.

Sd/-

Chief Judge  
City Sessions Court, Calcutta

Sd/-

Chief Judge  
City Sessions Court, Calcutta