

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. 192 dated 19.09.2024

Today is fixed for opening the two sealed envelopes in presence of all sides.

Ld. Special P.P on behalf of the CBI is present by filing hazira.

Ld. Counsel for the Inspector General of Police, Intelligence Branch, West Bengal and ADG (Crime), Crime Investigation Department, Government of West Bengal is present along with one appointment letter issued by Legal Remembrancer, Government of West Bengal vide Memo no. 2682-A/Misc. 26/2024 (CrI) dated 09.09.2024.

Let the same be kept with the record.

Ld. Counsels for the defacto complainant i.e. the widow of the deceased namely Bharati Tamang is present by filing hazira and the Ld. Senior Counsel for the defacto complainant is present through virtual mode.

Ld. Counsel for the Inspector General of Police, Intelligence Branch, West Bengal and ADG (Crime), Crime Investigation Department, Government of West Bengal has filed two reports in sealed condition before this Court on 17.09.2024 and submits that this Court may re-open those two sealed envelopes today and peruse the reports and pass necessary direction as deemed fit and proper.

Ld. Counsel for the Inspector General of Police, Intelligence Branch, West Bengal and ADG (Crime), Crime Investigation Department, Government of West Bengal further submits that after going through the reports this Court will decide whether those reports can be furnished to the parties or not.

Ld. Counsel for the defacto complainant i.e. the widow of the deceased namely Bharati Tamang submits that charge sheet has already been submitted in this case and on the basis of the application dated 26.07.2024 this Court has already passed necessary directions upon the Inspector General of Police, Intelligence Branch, West Bengal and ADG (Crime), Crime Investigation Department, Government of West Bengal and called for a detailed report and directed them 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.

Ld. Spl. P.P of behalf of the CBI submits that the charge sheet has already been submitted in this case and the CBI has already filed two reports dated 21.08.2024 and 10.09.2024 before this Court.

Heard all sides.

The two reports filed by the Inspector General of Police, Intelligence Branch, West Bengal and ADG (Crime), Crime Investigation Department, Government of West Bengal in sealed conditions are opened in open Court today in presence of all sides.

Perused the two reports filed by the Inspector General of Police, Intelligence Branch, West Bengal and ADG (Crime), Crime Investigation Department, Government of West Bengal.

Let the two reports be kept with the record.

Now I refer to the 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 the Hon'ble Court observed 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.”

Ld. Counsel for the victim has referred to the Judgement of the Hon’ble Supreme Court of Indian in the case of **Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal and others reported in (2020) 7 Supreme Court cases 1** wherein the Hon’ble Supreme Court of India held that an application can always be made to a Judge for production of such a certificate from the requisite person under S. 65-B(4) in cases in which such person refuses to give it.

Ld. Counsel for the victim submits by relying upon the above judgement that this Court is fully empowered to pass necessary directions on the basis of the above judgement of the Hon’ble Apex Court in the case of **Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal and others reported in (2020) 7 Supreme Court cases 1** for production of all electronic evidences for the ends of unearthing the truth.

On perusal of the order dated 27.08.2024 passed by this Court and also the Judgement dated 8th 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 10th May 2024, I find that the Hon’ble Supreme Court of India has observed that prima facie it may be noted that there is existence of the transcripts inasmuch as, even the prosecution agency namely the CBI does not dispute about its existence as well as its authenticity though it awaits the outcome of the forensic report. Thus, I find from the solemn order of the Hon’ble Supreme Court of India that there is existence of transcripts which due to deficiency in investigation is not produced before this court by the Investigation Agencies.

In view of such observation of the Hon’ble Supreme Court of India in its order dated 8th October, 2013 I am of the view that the reports be shared with the CBI as well as the victim party moreso because charge sheet has already been submitted in this case by the CBI.

Ld. Counsel for the Inspector General of Police, Intelligence Branch, West Bengal and ADG (Crime), Crime Investigation Department, Government of West Bengal is directed to share the copy of the reports filed before this Court on 17.09.2024 to the Counsel for the CBI as well as the Counsel for the victim party in the meantime and file acknowledgment receipt before this Court on the next date fixed positively.

Fix **14.11.2024** for further hearing upon the petition dated 26.07.2024 filed by the victim party.

Todate i.e. 20.09.2024 for hearing on the point of consideration of charge.

D/C by me

Sd/-

Sd/-

Chief Judge
City Sessions Court, Calcutta

Chief Judge
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