

SESSIONS CASE NO 128 OF 2013
CNR-WBCS01-000139-2013
Present: Sri Soumendra Nath Das
J.O. CODE NO.WB01132
Chief Judge, City Sessions Court, Calcutta

Order no.194 dated 12.11.2024

Today is fixed for appearance and framing of charge.

To-day is also fixed for bringing updated order from the Hon'ble Supreme Court of India, if any.

To-day is also fixed for production of the accused persons namely 1. Subhash Tamang and 6. Tilak Rai by the respective sureties positively i.d. necessary order and submission of current status report about the present position of the accused persons namely 1. Subhash Tamang and 6. Tilak Rai by the I.O. of this case.

Out of (48) Accused persons, (44) Accused persons namely 2.Prashant Chhetri @ Yogen Rai, 3.Asish Tamang, 4.Sudesh Rai Majhi, 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, 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 Chhetri, 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 on Court Bail are present in Court by filing respective haziras.

A fresh Vakalatnama has been filed on behalf of the accused person no. 44. Harka Bahadur Chettri.

Let the same be kept with the record.

Ld. Counsel for the De-facto Complainant and the Ld. Special P.P. for C.B.I. are present.

Ld. Counsels for the above named accused persons are present.

The I.O. of this case is present along with the C.D.

Inspector, CBI, SCB, Kolkata (Holding Investigating Officer) files a compliance report along with two reports of Sumit Dwivedi, Sub-Inspector, CBI, SCB, Kolkata and also a photocopy of Dearth Certificate in the name of Subash Tamang and other annexures along with a death report of Tilak Rai issued by the Secretary Dasnam Karma Sanyas Bhakti Sangathan, Darjeeling indicating his death on 10.01.2022 through the Ld. Special P.P stating that the accused persons namely 1) Subhash Tamang and 6) Tilak Rai have expired and their death have been verified and therefore prays for passing necessary order.

Ld. Special P.P. submits that the two accused persons namely 1) Subhash Tamang and 6) Tilak Rai have already died and prays for passing necessary order.

Heard all sides. It appears from the papers and certificate of death of the accused 1) Subhash Tamang that he died on 20.07.2023 and accused 6) Tilak Rai died on 10.01.2022.

Perused the report of the Inspector, CBI, SCB, Kolkata (Holding Investigating Officer) along with all the annexures in respect of both the accused namely 1) Subhash Tamang and 6) Tilak Rai since deceased.

Ld. P.P for the CBI, Ld. Counsel for the defacto complainant/victim party and the Ld. Counsel for the accused persons conjointly submits that the case be filed for ever against the two accused persons namely 1) Subhash Tamang and 6) Tilak Rai.

Heard all sides.

In view of such submissions of the respective counsels and the report filed along with supporting documents, the case against the two accused persons namely 1) Subhash Tamang and 6) Tilak Rai is **filed for ever**.

The two accused persons namely 5.Sunil Rai and 17.Ruden Sada Lepcha on Court bail are found absent on repeated calls.

A petition has been filed on behalf of the accused person namely 5.Sunil Rai stating that the accused/petitioner is a tea garden worker and today he could not appear before this Court physically on the ground stated in the petition and therefore Ld. Counsel prays for condoning his absence for today with a further prayer for an adjournment on the ground stated therein.

Ld. Counsel for the accused person namely 5.Sunil Rai also undertakes that this accused person will be produced before this Court on the next date fixed positively in default this Court may pass necessary order.

Another petition along with a photocopy of letter bearing Memo no.59/CON dated 10.11.2024 has been filed on behalf of the accused person namely 17.Ruden Sada Lepcha stating that this accused/petitioner is the MLA of Kalimpong Assembly Constituency and also the Chairman of Lepcha Development and Cultural Board and he was served with a letter by the District Magistrate, Kalimpong dated 10.11.2024 requesting him to attend a meeting to be held today i.e. on 12.11.2024 at Darjeeling being the Chairman of W.B. M. L.L. D.B. and being the M.L.A. the accused/petitioner has no other option left but to attend such crucial meeting and so the accused/petitioner could not attend Court today and therefore the Ld. Counsel prays for condoning his absence for today with a further prayer for an adjournment on the ground stated therein.

Heard all sides on the point of condoning absence of the accused persons namely 5.Sunil Rai and 17.Ruden Sada Lepcha.

Having heard the submissions of all sides, the prayers for condoning absence of the accused persons namely 5.Sunil Rai and 17.Ruden Sada Lepcha is considered and allowed for the ends of justice with a direction upon both the accused persons above named to remain present before this Court 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 along with a server copy of order dated 30.09.2024 passed by the Hon'ble Supreme Court of India and server copy of case details in connection with Diary No.30179/2024 with SLP (Crl.) Nos.9688-9689/2024 from the official web site of the Hon'ble Supreme Court of India 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 of the same

on 26.07.2024 the Hon'ble Supreme Court of India was pleased to admit the Special Leave petition.

Ld. Counsel for the accused person namely Bimal Gurung further stated that on 30.09.2024 the matter was taken up for hearing before the Hon'ble Division Bench comprising Hon'ble Justice Bela M. Trivedi and the Hon'ble Justice Satish Chandra Sharma when the Ld. Counsel appearing for the respondent no.2 (i.e. widow of the deceased) sought for time to file counter affidavit and so the Hon'ble Court was pleased to adjourn the matter directing the matter to be listed on a non-miscellaneous day in the mean time pleadings to be completed.

Ld. Counsel for the accused person namely Bimal Gurung further contends that till date no such counter affidavit has been filed by the respondent no.2 (i.e. widow of the deceased) and the tentative date for listing of this matter has been fixed on 19th November, 2024 before the Hon'ble Apex Court and therefore the Ld. Counsel prays for an adjournment today for enabling him to bring further order/orders from the Hon'ble Supreme Court of India.

Perused the copy of order dated 30.09.2024 in SLP (CrI.) Nos.9688-9689/2024 wherein the Hon'ble Supreme Court of India has been pleased to observe as follows:

“Learned Counsel appearing for Respondent no.2 seeks time to file counter affidavit.

List after four weeks on a non-miscellaneous day.

In the meantime, pleadings to be completed.”

Ld. Counsel for the CBI categorically submits before this Court that there is no stay order debarring this Court from framing of charges against the accused persons but he admits that some of the accused persons are not present before this Court today.

Ld. Counsel for the accused persons submits that the petition filed on behalf of the Bimal Gurung pending before the Hon'ble Supreme Court of India was adjourned at the instance of the victim respondent no. 2 seeking time to file counter affidavit and he strenuously submits before this Court that the said counter affidavit, inspite of the solemn direction of the Hon'ble Supreme Court of India has not been filed by the defacto complainant till date and the matter will come up for hearing tentatively on 19.11.2024.

Ld. Counsel for the defacto complainant submits that there was no intentional delay on their part before the Hon'ble Supreme Court of India and the matter is likely to be heard tentatively on 19.11.2024.

Ld. Counsel for the defacto complainant further submits that stay of all proceedings before the Trial Court were prayed for before the Hon'ble Supreme Court of India but the same was not granted to the accused person and therefore there is no impediment to proceed with the framing of charges against the accused persons.

Ld. Counsel for the defacto Complainant also submits that it is a long pending case and no stay order has yet been granted by the Hon'ble Supreme Court of India in this case and so there is no bar to frame the charges against the accused persons and to proceed with the trial.

Having heard all sides and also considering the fact that two accused persons namely 5.Sunil Rai and 17.Ruden Sada Lepcha are absent today and the matter is pending before the Hon'ble Supreme Court of India for final hearing with regard to the prayer for exemption of accused person Bimal Gurung @ Daju, this Court has no other alternative but to adjourn the framing of charges against the accused persons for the ends of justice.

Ld. Counsel for the widow of the deceased namely Bharati Tamang files a petition stating that on 10.09.2024 the learned Counsel of the CBI had filed one compliance report in terms of the order dated 27.08.2024 passed by this Court and the copy of the said report was not served upon the widow of the deceased and therefore the Ld. Counsel prays for a direction upon the CBI to serve the widow of the deceased a copy of the compliance report filed on 10.09.2024 by the CBI for proper adjudication of the case.

Ld. Counsel for the CBI submits before this Court that the Prosecution will supply a copy of the compliance report filed on 10.09.2024 by the CBI in the meantime to the counsel for the defacto complainant.

Heard both sides.

In view of such fact, the Prosecution/CBI is directed to supply a copy of the compliance report filed on 10.09.2024 by the CBI to the Ld. Counsel for the widow of the deceased in the meantime and submit an acknowledgment receipt in this regard on the next date fixed.

No compliance report in terms of order no.193 dated 20.09.2024 passed by this Court has yet been received from the Ld. Chief Judicial Magistrate, Calcutta.

As the case against the two accused persons namely 1) Subhash Tamang and 6) Tilak Rai has already been filed **for ever**, let a copy of this order be sent to the Ld. Chief Judicial Magistrate, Calcutta for information.

Ld. Counsel for the accused person namely Bimal Gurung is directed to submit updated order of the Hon'ble Supreme Court of India, if any, on the next date fixed.

On consent of all sides, fix **13.12.2024** for appearance and framing of charges.

To-date i.e. on **13.12.2024** for bringing updated order from the Hon'ble Supreme Court of India, if any.

To-date i.e. on **13.12.2024** for appearance of the accused persons namely 5.Sunil Rai and 17.Ruden Sada Lepcha on the next date fixed positively i.d. necessary order.

All the accused persons are directed to remain present on the next date fixed positively i.e. necessary order in accordance with law.

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

Let a copy of this order be sent to the I.O. of this case through the Ld. Special P.P. for information and necessary action.

D/C by me.

Sd/-
Chief Judge
City Sessions Court, Calcutta

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