

**Order no. 89 dated 24.7.17**

Today is fixed for appearance of the accused persons, further hearing on the point of consideration of charge and the discharge petitions.

Accused 1) Harka Bahadur Chettri, 2) Keshav Raj Pokhrel, 3) Arun Moktan, 4) Tenzing Khambachay (Sherpa), 5) Kamal Sinha, 6) Edwin Sanchabir Subba, 7) Goutam Tamang, 8) Puran Thami, 9) Keshar Rai, 10) Dawa Sangey Sherpa, 11) Suraj Singh, 12) Kismat Chhettri, 13) Alok Kantamoni Thulung, 14) Sanjoy Tamang, 15) Bhanu Rai, 16) Amol Lama, 17) Nagendra Pradhan, 18) Ramesh Allay, 19) Ashis Tamang, 20) Subhash Tamang, 21) Khagen Tamang, 22) Sona Sherpa, 23) Ruden Sada Lepcha, 24) Ranjit Rai, 25) Rabin Subba and 26) Pradeep @ Bhupendra Pradhan are present by filing haziras.

Hazira filed on behalf of Bharati Tamang (widow of the deceased) through her advocate.

Accused 1) Jiten Tamang, 2) Dinesh Gurung @ Karate Kaila, 3) Bimal Gurung @ Daju, 4) Smt. Asha Gurung, 5) Pemba Tshering Ola, 6) Roshan Giri, 7) Binay Tamang, 8) Miss. Urmila Rumba, 9) Sushma Rai, 10) Dinesh Theeng, 11) Devendra Sharma, 12) Sandhya Gurung, 13) Anita Lakhandri, 14) Kabita Dahal, 15) Prasant Chhettri @ Yogen, 16) Dipen Malay, 17) Sudesh Rai Majhi, 18) Sunil Rai, 19) Tilak Rai, 20) Babita Ganguly, 21) Naresh Rai, 22) Prabin Subba are absent.

Ld. Advocates for the above named accused persons filed four petitions under section 317 Cr.P.C. praying for permission to represent the accused persons by them.

One of the hazira filed by accused Keshav Raj Pokhrel contains that he could not afford to appoint any lawyer and prays for engaging the same through Legal Aid by this court.

In respect of this prayer the accused Keshav Raj Pokhrel was advised in English as well as in Nepali language to file such prayer before the Secretary, DLSA, Kolkata who would be able to decide on his entitlement of Legal Aid.

Ld. Spl. P.P. is present and he has filed a petition stating that the Id. Spl. P.P. had raised very vehement objection with regard to the petition u/s. 317 Cr.P.C. filed on behalf of the accused persons on 13.6.17 which was not reflected in the order dated 13.6.17 for which reason the Hon'ble court had viewed adversely W.P. no. 15306(W) of 2017.

In view of the above petition it is a fact that the Id. Spl. P.P. had raised objection on 13.6.17 against the petitions u/s. 317 of the Cr.P.C. but the same was inadvertently not mentioned on the order sheet dated 13.6.17 as previously also similar petitions had been allowed without the order sheet reflecting the Id. Spl. P.P's objection.

Ld. Spl. P.P. has also filed a petition stating that as per the direction of the Hon'ble court in W.P. no. 15306(W) of 2017 the intimation of the order had been done by sending notices to the accused persons and to their respective addresses and even by pasting the notices in the conspicuous portion of their residences and over mobile.

Let the same be kept with the record as the dates fixed today was already known to the accused persons vide order dated 13.6.17.

By another petition the Id. Spl. P.P. has prayed for issuance of nonailable warrant of arrest against the absentee accused persons namely 1) Jiten Tamang, 2) Dinesh Gurung

@ Karate Kaila, 3) Bimal Gurung @ Daju, 4) Smt. Asha Gurung, 5) Pemba Tshering Ola, 6) Roshan Giri, 7) Binay Tamang, 8) Miss. Urmila Rumba, 9) Sushma Rai, 10) Dinesh Theeng, 11)Devendra Sharma, 12) Sandhya Gurung, 13) Anita Lakhandri, 14) Kabita Dahal, 15) Prasant Chhettri @ Yogen, 16) Dipen Malay, 17) Sudesh Rai Majhi, 18) Sunil Rai, 19) Tilak Rai, 20) Babita Ganguly, 21) Naresh Rai, 22) Prabin Subba.

Yet another petition has been filed on behalf of the prosecution praying for supply of copy of the order passed today.

Heard. Perused and considered.

At this stage ld. Lawyer for the accused persons has stated that they preferred to move before the Hon'ble Apex Court for transfer of this case from Kolkata due to the political vendetta of the State Government. Moreover, it has been submitted that the wife of the slain Madan Tamang had already made a prayer before this court for moving before the Hon'ble Apex Court and the same is also pending and due to the present turmoil in the hills the petitioners could not attend this date.

But the ld. Spl. P.P. vehemently objected and also moved the petition praying for issuance of nonailable warrant of arrest against the absentee accused persons.

At this stage this court tried to conduct the hearing of the discharge petition as well as the consideration of charge but the ld. Spl. P.P. submitted that the petition praying for issuance of nonailable warrant against the absentee petitions should be disposed of first otherwise it would appear that by default the petition u/s. 317 of the Cr.P.C. has been allowed.

One resolution adopted by the local bar to refrain from passing any adverse order is prevailing today.

Under such circumstances to tomorrow i.e. 25.7.2017 for order in this regard.

Let a copy of this order be handed over to the ld. Spl. P.P. as prayed for.

D/C. by me.

Sd/-

Chief Judge  
City Sessions Court, Calcutta.

Sd/-

Chief Judge  
City Sessions Court, Calcutta.

