

Order no. 90 dated 25.7.17

Today is fixed for passing necessary order with respect to petitions dated 24.7.2017 filed by the Spl. P.P. praying for issuance of non bailable warrant against the 22 nos. of absentee accused persons and the petitions dated 24.7.17 praying for exemption from appearance under section 317 of the Cr.P.C. filed on behalf of the 22 nos. of absentee accused persons.

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.

Perused and considered.

Ld. Spl. P.P. had supplied a copy of the order passed by the Hon'ble High Court, Calcutta in W.P. no. 15306(W) of 2017.

On perusal of the order passed by the Hon'ble court the directions applicable to this case appears to be two-fold, one upon the prosecuting CBI who should ensure the presence of all the accused persons in the trial court as directed by the Division Bench of the Hon'ble court in CRM no. 5221 of 2015 and other connected matter on 14th December, 2016, so that the process of framing charge could progress further and be completed by 17th of August, 2017 and another upon this court to conduct the hearing on day to day basis if necessary so that the framing of charge would be completed within the stipulated time. In this regard the operative portion of order is re-produced below for better appreciation –

“It is, therefore, surprising that the applications under section 317 of the said Code have been accepted and granted without any opposition from the C.B.I. We, therefore, direct that on 24th July, 2017 the C.B.I. shall ensure the presence of all accused persons in the Trial Court, as directed by the Division Bench of this court in C.R.M. No. 5221 of 2015 and other connected matters on 14th December, 2016 so that the process of framing of the charge can progress further and be completed. The charge should be framed by 17th August, 2017. The Trial Judge will hear the matter on day-to-day basis, if necessary,

so that the framing of the charge will be completed within the stipulated time. Regarding the trial thereafter, the Division Bench has already directed that it should be conducted day-to-day.”

But the Hon'ble court had laid down conditions inter-alia in CRM No. 5221 of 2015 that while granting the anticipatory bail under section 438 of the Cr.P.C., that one day prior to the date fixed for framing of charge none of the petitioners should leave the jurisdiction of the Kolkata police and the petitioners against whom the charge be finally framed should not leave the jurisdiction of the Kolkata police, until the trial is over except with the prior leave of the trial court. While passing the above order the CBI was granted a liberty, that should any of the conditions be violated, prayer for cancellation of the anticipatory bail could be made.

In other words, it would mean, from the order passed by the Hon'ble court in CRM no. 5221 of 2015 is that the Hon'ble court while granting the prayer for anticipatory bail to the petitioners had also reserved the right to cancel such bail by allowing the CBI to pray for such cancellation before it only, thereby taking away such coercive rights which usually accrues to the trial courts, in the event of violation of the conditions imposed upon the accused persons. Hence this court's power is restricted to the extent that on non-appearance of the accused persons the prosecuting agency CBI has to follow the mandate passed in CRM no. 5221 of 2015 and thus ensure the appearance of the accused persons.

Under such circumstance this court would not be in a position to accede to the prayer of the Id. Spl. P.P. to issue non bailable warrant against the absentee petitioners on the ground that issuance of such non bailable warrant would in effect tantamount to actually cancelling the anticipatory bail granted by the Hon'ble court, which would again be in total contempt of the contemplations of the Hon'ble court's direction in CRM no. 5221 of 2015. This contention is further vindicated by the fact that the Hon'ble court in W.P. 15306(W) of 2017 also directed the CBI to ensure the presence of all accused persons in trial court on the basis of the directions passed by the Hon'ble Division Bench of the Hon'ble court in CRM no. 5221 of 2015. Nowhere in the above order has the Hon'ble court directed the CBI to pray for issuance of non bailable warrant even while criticizing their complacency to oppose the prayer for adjournments. Stung by the criticism made by the Hon'ble court the Id. Spl. P.P. had preferred this prayer for issuance of non bailable warrant, whereas the CBI would have done well to follow the directions of the Hon'ble Court in WP 156306(W) of 2017, which again was to follow the mandate passed in CRM no. 5221 of 2015, which was not done, when it filed the instant prayer.

That apart like mentioned above the direction of the Hon'ble court was also upon this court to conduct the hearing on day-to-day basis so that the framing of charge would be completed by 17th August, 2017 and in this regard if the prayer of the Id. Spl. P.P. is allowed then it would create a catch-22 type situation as the compliance of the direction of the Hon'ble court for completion of the framing of charge within 17th August, 2017 would be a hindrance. Hence, when the direction of the Hon'ble Court upon this Court to complete the hearing within the above mentioned period is binding upon this Court for this reason as discussed above, the prayer for issuance of non bailable warrant of arrest

against the absentee petitioners has to be refused. At the same time the absentee accused persons should also be present along with the other accused persons for consecutive hearing of the discharge petitions and the consideration of charge on 01.8.17, 02.8.17, 03.8.17 and 04.8.17.

D/C. by me.

Chief Judge
City Sessions Court, Calcutta.
Calcutta.

Chief Judge
City Sessions Court,
Calcutta.

Later order no. 90 dated 25.07.2017

After passing the above order one petition has been filed on behalf of the accused person Col Ramesh Aley after serving the copy to the Ld. Spl. P.P, on the ground that after the previous day's hearing they were subjected to search and interrogation by the officers of Bidhannagar Police who also threatened them to implicate them in false cases since they are supporting the issue of Gorkhaland. Therefore, a prayer has been made for direction upon the prosecuting agency for providing adequate protection to them from the atrocities of the State administration in Kolkata and surrounding areas during their stay at Kolkata or in the alternative to pass such order which are deemed fit and proper.

Ld. Spl. P.P submits that the prosecuting agency CBI is under no compulsion to provide security to the accused persons and the accused persons had to defend themselves as the law and order of the State matter.

Heard. Considered.

Let a copy of this petition be sent to the Commissioner of Bidhannagar Commissionerate calling for a report in this regard by the above dates (01.08.2017).

D/C. by me.

Sd/-
Chief Judge
City Sessions Court, Calcutta.
Calcutta.

Sd/-
Chief Judge
City Sessions Court,
Calcutta.

Later order no. 90 dated 25.07.2017

After passing the abovementioned order one petition has been filed by the Ld. Spl. P.P and praying for supplying plain copy of this order passed today for the official purpose.

Heard. Considered. Prayer is allowed.

Copy of this day order i.e 25.07.2017 be handed over to the Ld. Spl. P.P as prayed for.

D/C. by me.

Sd/-
Chief Judge
City Sessions Court, Calcutta.
Calcutta.

Sd/-
Chief Judge
City Sessions Court,
Calcutta.

Sessions Case no. 128 of 2013

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Heard. Considered.

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Chief Judge
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Calcutta.

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Calcutta.