

Sessions Case no. 128 of 2013

Order no. 92 dated 01.08.2017

Today is fixed for consideration of charge and hearing of the discharge petition and compliance report from Commissioner of Bidhannagar Commissionerate.

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 27) Dinesh Gurung @ Karate Kaila 28) Anita Lakhandri, 29) Sandhya Gurung, 30) Kabita Dahal, 31) Sunil Rai, 32) Sudesh Rai Majhi, 33) Prasant Chhettri @ Yogen, 34) Miss. Urmila Rumba, are present by filing haziras.

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

Accused 1) Jiten Tamang, 2) Bimal Gurung @ Daju, 3) Smt. Asha Gurung, 4) Pemba Tshering Ola, 5) Roshan Giri, 6) Binay Tamang, 7) Sushma Rai, 8) Dinesh Theeng, 9) Devendra Sharma, 10) Dipen Malay, 11) Tilak Rai, 12) Babita Ganguly, 13) Naresh Rai, 14) Prabin Subba are absent.

Ld. Advocates for the above named accused persons filed three petitions under section 317 Cr.P.C. praying for permission to represent the accused persons by them after serving the copy to the ld. Spl. P.P.

In view of the observation made in the earlier order since the prosecution could not ensure the appearance of the accused persons the prayer u/s. 317 of Cr.P.C. stand allowed and for similar reason the verbal prayer for issuance of nonailable warrant of arrest against the absentee accused persons stands rejected.

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

One petition is filed by the ld. Advocate for the accused persons along with the Xerox copy of e-mail related to transfer petition (Cr.) 238/2017 titled Roshan Giri & Ors. Vs. State through CBI & Ors. And Xerox copy of Hon'ble Supreme Court's order dated 31.7.2017 praying for adjournment. Copy served.

One report dated 29.7.2017 submitted by I.C., Bidhannagar North P.S. and duly forwarded by Commissioner of Police, Bidhannagar Commissionerate on 31.7.2017 is received today.

Perused and considered.

By the petition submitted by the I.C., Bidhannagar North P.S. dated 29.7.17 it transpires that the Bidhannagar North P.S. conducts such checking and search in the Hotel and Guest houses on a regular basis and in this connection they had conducted checking

and search at Gorkha Bhawan on 24.7.2017, merely to verify the credentials of the boarders. It is also reported that no threat or harassment was done to any of the residents.

If it is only a matter of security and search in connection with the duty of Bidhannagar North P.S., then nobody has any right to complain, but as the perception of the petitioners seem to be otherwise than the mere search and security duty, the personnel of the Bidhannagar North P.S. should be guided by the I.C., Bidhannagar North P.S. to restrain and refrain themselves while conducting such duty so that the people for whom such duty is being performed should not be disillusioned by the over enthusiasm shown by the force during such duty.

Let the I.C., Bidhannagar North P.S. be informed by sending a copy of this order through the Commissioner of Police, Bidhannagar Commissionerate.

As regards the prayer for adjournment on the ground that a transfer petition had been filed before the Hon'ble Supreme Court on behalf of the accused persons Roshan Giri & anr., it was pointed out that this court was also under the solemn direction of the Hon'ble High Court to frame charges by 17th August, 2017 and as such in the absence of any stay from the Hon'ble Supreme Court the instant case cannot be adjourned and therefore, the adjournment prayer stands rejected.

The case is now taken up for consideration of charge and the petitions praying for discharge.

Ld. Spl. P.P. on behalf of the prosecution has started the argument on the ground that there were three turning point of the case firstly, first charge sheet was filed against 24 accused persons apart from the 6 FIR named accused persons by the CID, West Bengal thereafter on the basis of the notification no. 2148 PS dated Kolkata 26th November, 2010 and the subsequent notification vide no. 228/81/2010-AVD-II dated 18th January, 2011 of Ministry of Personnel, Public Grievances and Pensions, DOPT, Govt. of India the CBI, SCB- Kolkata had been directed for further investigation on 19.01.2011. On the basis of such investigation one charge sheet against one accused Dipen Malay under sections 148/149/427/506/302/120B of the I.P.C. was filed with a prayer for further report under section 173(8) of Cr.P.C. thereafter the widow of the slain Madan Tamang filed one WP 159 of 2012 and the Hon'ble Supreme Court passed in order directing the CBI to further investigate the case and submit its comprehensive report before the court of the Principal District and Sessions Judge, Kolkata after transferring the case from the District and Sessions Judge, Darjeeling. After which the CBI then filed the comprehensive charge sheet on 29.5.2015. He has therefore pointed out to the various statements and evidences and has finally submitted that after intercepting the mobile conversations of the accused persons in following accused persons were also found involved in the murder of Madan Tamang being namely – Bimal Gurung, Binoy Tamang, Harka Bahadur Chhetry, Pradip Pradhan, Col. Ramesh Allay, Roshan Giri, Devendra Sharma and Dinesh Theeng u/s. 120B r/w 150/506/302 of I.P.C. and against accused Pembe Tshering Ola, Ms. Asha Gurung, Ms. Sushma Rai, Ms. Sandhya Gurung, Goutam

Tamang, Mr. Urmila Rumbha, Ms. Mamta Rai, Ms. Anita Lakhandry, Ruden Sada Lepcha @ Rudha Lepcha, Edwin Subba @ Edwin

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Sanchabir Subba, Rabin Subba, Khagen Tamang, Ranjit Rai, Jiten Tamang and Ms. Kabita Dahal @Hingmang u/s. 120B r/w 147/148/149/427/506/302 of I.P.C. in addition to the accused persons charge sheeted earlier in the respective offences.

Ld. Spl. P.P. closes his argument on the point of consideration of charge.

Ld. Lawyer for the accused persons pray for adjournment to start the argument in respect of the discharge prayer at 10.30 a.m. on the following day.

To date i.e. on 02.8.2017 for hearing.

D/C. by me.

Sd/-

Chief Judge
City Sessions Court, Calcutta.
Calcutta.

Sd/-

Chief Judge
City Sessions Court,