

Order no. 93 dated 02.08.2017

Today is fixed for hearing on the point of consideration of charge and hearing of 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 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. stands allowed.

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

Discharge petition dated 30.01.2017 filed on behalf of accused Roshan Giri is taken up for hearing and also hearing on the point of consideration of charge.

Heard. Considered.

Ld. Lawyer for the accused Roshan Giri has submitted that the accused was not named in the FIR and even after the second investigation by CBI he was not charge sheeted whereas after the final charge sheet he was made an accused. Moreover, he has submitted that the involvement of the accused in the alleged offence as per the version of the prosecution is limited to the extent that the accused Roshan Giri, whose telephonic conversation had been intercepted but the phone did not belong to the accused and the same belonged to Suraj Limbu who again had denied handing over any phone or SIM card to the accused person for use. That apart the prosecution has further alleged that the other co-accused Asha Gurung had called him in his wife's mobile number immediately after the incident and had the call log charts to substantiate the above claim but in this regard he has also submitted that the mere submission of the call log charts would establish the calls had been made but would not be able to establish the kind of conversation that took place between the two. Moreover, he has also submitted that the prosecution has relied on the newspaper report dated 15<sup>th</sup> July, 2010 in Indian Express wherein the instant accused was found to be having telephonic conversations with the other charge

sheeted accused persons immediately after the incident but the statement of the reporter does not indicate of such telephonic intercepts not do the Indian Express management admit to having had in possession such telephonic intercepts. Therefore, apart from the newspaper publications there is hardly any evidence to support the prosecution allegation. Furthermore, he has argued that the evidences prior to framing of charge should be of such nature that should arouse grave suspicion and not plain suspicion to go to trial.

In this regard he has relied on the following judgements :-

- 1) (2014)11 Supreme Court Cases 709 – State of T.N. v. N. Suresh Rajan
- 2) JT 2008 (6) SC 299 – Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra,
- 3) (2017) 2 Supreme Court Cases (Cri) 510 & (2017) 5 Supreme Court Cases 163 – State of Uttar Pradesh & Ors vs. Subhash Chandra Jaiswal & Ors.
- 4) JT 2007(3) SC 229 – Harishchandra Prasad Mani & Ors. Vs. State of Jharkhand & Anr.
- 5) (2002)2 Supreme Court Cases 135 – Dilawar Balu Kurane v. State of Maharashtra
- 6) (1990) 4 Supreme Court Cases 76 – Niranjana Singh Karam Singh vs. Jitendra Bhimraj Bijjaya & ors.
- 7) (1979) 3 Supreme Court Cases 4 – Union of India vs. Prafulla Kumar Samal & Anr.
- 8) JT 1998 (6) SC 371 – Suresh Budharmal Kalani @ Pappu Kalani v. State of Maharashtra.
- 9) JT 2007 (1) SC 82 – Subhash Harnarayanji Laddha v. State of Maharashtra,
- 10) SLP (Cri) No. 6374 of 2010 – Sajjan Kumar vs. Central Bureau of Investigation.

Discharge petitions dated 30.01.2017 filed on behalf of accused Asha Gurung, Sushma Rai, Sandha Gurung, Urmila Rumba, Anita Lakhandri, Kabita Dahal, Babita Ganguly and Sona Sherpa are taken up for hearing and also hearing on the point of consideration of charge.

Ld. Lawyer for the above petitioners submits that with regard to accused Sushma Rai, Sandha Gurung and Kabita Dahal the allegation is based on the solitary witness for each of the accused persons.

With regard to the accused Sushma Rai the testimony of Shailesh Rai is the only vital one as it was recorded on 06.06.2011 and the name of Sushma Rai transpired in his statement only but when the charge sheet was filed her name did not transpire in the charge sheet dated 21.08.2011 but subsequently in the final charge sheet the accused Sushma Rai had been alleged to have been a part for the unlawful assembly armed with the deadly weapon and she was also supposed to have been inconstant telephonic contact with co-accused Nikol Tamang as well as accused Debendra Sharma and Suraj Singh.

With regard to the accused Kabita Dahal the submission made by the ld. Lawyer is that one Smtri Dahal had been examined under section 161 Cr.P.C. on 01.02.2011 but she did not disclose her name in the statement and even in the statement before the ld. Magistrate she had not implicated the said accused but the said witness had clarified on 30.3.2015 that she had mentioned the accused Kabita Dahal as Sabita @ Sarita Hingman. He has also further alleged that during clarification on 13.7.2014 the said witness did not clarify the above anomaly.

At this stage the ld. Lawyer for the accused persons prays for adjournment on the ground stated therein.

Heard. Perused the petition. Considered.

Prayer for adjournment is allowed since it is 04.30 p.m.

To date i.e. on 03.8.2017 for further hearing.

D/C. by me.

Sd/-

Chief Judge  
City Sessions Court, Calcutta.

Sd/-

Chief Judge  
City Sessions Court, Calcutta.