

Sessions Case No. 40 of 2012

Order No. 94 dated 09. 08. 2017 :-

Today is fixed for passing necessary order in respect of petition dated 10. 07. 2017 filed on behalf of all the accused persons and hearing of bail petition dated 03. 02. 2017 in respect of accused Saheb Das.

Four accused persons, namely, Ratan Das, Kalyan Hazra, Sahadeb Samanta and Saheb Das are produced from judicial custody and placed on dock.

Another (5<sup>th</sup>) accused persons, namely, Hanif Sk on AI bail is present. He prays for extension of AI bail. Heard. Considered.

Ld. PP and Ld. Advocates are present.

On last occasion, I have heard the argument/hearing of both sides in length. Ld. PP also filed written objection and some cited judgments.

Ld. Advocate for the accused persons have submitted that on 10. 07. 2017 prosecution produced one witness, namely, Makhan Lal Gupta who is the Investigating Officer in Sessions Case No. 28 of 2012 corresponding with case No. C/DD(ADR) 458 dated 14. 12. 2011 under Sections 395/397/120B of Indian Penal Code and that case was pending before this court. This witness as IO prepared the seizure list and recorded statements of seizure list witnesses in connection with Sessions Case No. 28 of 2012. The IO, cited this witness in charge-sheet as CSW-44, neither this witness had played any role in connection with this case, nor he had put any signature in anywhere. It is also argued by Ld. Defence counsels that some seizure list or some statements in connection with Sessions Case No. 28 of 2012 are lying with the case record vide Sessions Case No. 40 of 2012. The complainant @ victim, IO and facts of the case are different/separate in two cases. Ld. Defence counsels prayed for dropping the name of Makhan Lal Gupta as CSW-44 from Sessions Case No. 40 of 2012.

Ld. PP vehemently opposes the prayer and submitted that though the incident had occurred on different date but the accused persons, namely, Md. Hanif Sk., Saheb Das and Sahadeb Samanta are involved in both the incidents.

Ld. PP in respect of her submission relied upon the judgments referred as (1) R. Khanna, V. R. Krishna Iyer & R. S. Sarkaria in Criminal Appeal No. 75 of 1973, where the Hon'ble Court observed that 'The nature of the article in question is such that there was bound to arise suspicion in the mind of the person to whom the article was handed over. Looking to the peculiar nature of the stolen articles recovered from the accused, a presumption can be drawn

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against him in accordance with illustration even after the expiry of a period of several months. Court will be well justified in drawing a presumption against the person in possession under the above illustration even after the lapse of a period of more than one year. A presumption can drawn against the accused in accordance with illustration to Section 114 of the Evidence Act after expiry of a period of eight or nine months from the date of dacoity’.

On careful scrutiny of both the records i.e. Sessions Case No. 40 of 2012 and Sessions Case No. 28 of 2012, I find that the present witness Makhan Lal Gupta, being the Investigating Officer of Sessions Case No. 28 of 2012 seized some golden jeweleries from the possession of the accused persons and those were re-seized by the Investigating Officer in respect of Sessions Case No. 40 of 2012 during investigation by the order of Ld. ACMM, Calcutta.

<b>Particulars</b>	<b>Sessions Case No. 40 of 2012</b>	<b>Sessions Case No. 28 of 2012</b>
Date of incident	24. 08. 2011 at about 22:00 hrs.	14. 12. 2011 at about 08:00 hrs.
Information received	24. 08. 2011 at about 22:15 hrs.	14. 12. 2011 at about 08:20 hrs.
Case registered as	Burtolla PS case No. 301 dated 25. 08. 2011	Burtolla PS case No. 458 dated 24. 12. 2011
Filed Charge-sheet	On 13. 03. 2012 by SI-Dipak Saha	On 13. 03. 2012 by SI-Makhan Lal Gupta.
Registered as	GR case No. 2007/2011	GR case No. 2970/2011
Commitment and transferred to Ld. Chief Judge, Sessions Court, Calcutta	Ld. ACMM, Calcutta dated 03. 05. 2012.	Ld. ACMM, Calcutta dated 21. 03. 2012.
Received by this court	On 14. 05. 2012	On 05. 04. 2012
Charge framed on	18. 01. 2013	04. 12. 2012
Labelled under Sections	396 of IPC & 25(1B)(a) of Arms Act against Hanif Sk.	395/397 of Indian Penal Code
Name of accused persons	Ratan Das @ Barka, Kalyan Hazar, Sahadeb Samanta, Saheb Das and Hanif Sk.	Sahadeb Samanta, Joy Prakash Prosad, Gourab Singh, Saheb Das, Hanif Sk.

So, it is crystal clear from the above table that at first the offences are similar in nature, accused persons, mostly are same in both the cases. Sessions case No. 40 of 2012 is the older one, the complaint in respect of Sessions Case No. 28 of 2012 was lodged just after four months.

During investigation, police seized the gold made jeweleries inscription with ‘DP’ in connection with Sessions Case No. 28 of 2012 which was re-seized by the Investigating Officer of this case on 17. 01. 2012 upon proper seizure list vide order of the Ld. ACMM, Calcutta from Malkhana, DD, Lalbazar. The IO of Sessions Case No. 28 of 2012, Makhan Lal Gupta is one of the seizure list witness of Sessions Case No. 40 of 2012 and keeping in view of the decision of

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the Hon'ble Court that the ornaments were recovered on the basis of the disclosure statement of the accused under Section 27 of Evidence Act and in accordance with Section 114 of Evidence Act, I am inclined to hold that Makhan Lal Gupta, CSW-44 who is the seizure list witness in this case as well as IO of Sessions Case No. 28 of 2012, is a vital witness to be deposed to unearth the truth and to untie the knot of crime.

Considering the facts and circumstances of this case and overall discussions, above, the petition filed by the Ld. Defence counsel **dated 10. 07. 2017 is considered and stands rejected.**

Let the record is taken up for hearing of bail petition dated 03. 02. 2017 in respect of accused Saheb Das.

Ld. Advocate for the accused Saheb Das has stated that the present accused is in custody since his arrest and there is none to look after his family. Evidence of prosecution witness on his behalf has almost been completed. There is no such direct evidence against this accused. The mother of the accused is suffering from various ailments. He prays for bail of this accused on any condition.

Ld. PP opposes for bail and submitted that the accused is involved not only with this case but also in other cases. If the accused is released on bail, he may abscond and the case may be hampered. If on bail, the accused will linger the witnesses by tampering them.

I have gone through the material documents of this case as well as the case record and evidence on record. On minute scrutiny of the case record, it is revealed that the criminal antecedent of this accused is serious. 19 prosecution witnesses have already been examined in this case. The trial is going in full swing.

Considering the overall materials of this case, I am not inclined to release the accused person, namely, Saheb Das. Accordingly, the **bail prayer in respect of accused Saheb Das dated 13. 02. 2017 is considered and stands rejected.**

Fixing: **13. 09. 2017 at 2 p.m. for evidence of Makhan Lal Gupta (CSW-44).**

Prosecution is directed to bring witness on the date fixed along with the alamats, if any, in connection with this case.

IO shall remain present on the date.

Accused person is as before.

Dictated & corrected by me.

Addl. Dist. & Sessions Judge  
1st Fast Track Court, Calcutta

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1st Fast Track Court, Calcutta  
09. 08. 2017

