

In the Court of the Senior Municipal Magistrate

Kolkata

Present :

Smt. Reshmi Das

J O Code UID No.-WB01253

Senior Municipal Magistrate,

Kolkata, Dist.- Kolkata

GR Case no. 153 of 2024

CNR no. WBCS03-000164-2024

State

Vs.

Md. Fahim and others

Order dated

01-03-2025

Today is fixed for passing order in connection with the petition under section 239 CrPC filed by the accused persons namely Md. Fahim, Imran Fahim and Farhan Fahim on 01.10.24.

The accused persons are absent by filing a petition.

The instant petition as mentioned above, is taken up for passing order. Filtering out unnecessary details the brief fact of the instant petition is as follows:

The instant case initiated on the basis of a written complaint lodged before Anandapur Police station, by the Assistant Engineer (Civil) Debasis Som of Br-XII of KMC alleging unauthorized construction by the accused persons at the case premises no. A/88, West Chowbhaga. Thereafter, criminal case was initiated against the accused persons vide Anandapur P.S. Case No. 225 dated 24.08.23 u/s 401 (A) K.M.C Act. Subsequently, the accused were granted bail in connection with this case. It is the averment of the accused persons/petitioners that they have no involvement with the alleged unauthorized construction as the plot of land in question does not belong to the accused/petitioners and they are not the owners of the premises. On the basis of such claim the accused persons/petitioners as named above have prayed for discharge from this instant case.

As per contents of the provision as enshrined under Section 239 Cr.P.C ; if upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Court thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Court considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for doing so. In order to determine whether the charge is groundless, the court is required to consider the evidence prima facie. The court should examine whether the evidence, if un-rebutted, would result in a conviction or not. The scope of jurisdiction under Section 239 of the CrPC is limited, and the defense contention and documents produced by the defence in support of the plea cannot be considered while considering the application for discharge. The court should only consider the materials placed before it and whether they are sufficient to make out a prima facie case against the accused.

In this instant case, the accused persons entered appearance after service of notice upon them and were enlarged on bail on subsequent occasion. Thereafter, the date was fixed for consideration of charge. At that stage this instant application has been taken up for consideration. The main contention of the accused persons is that they are not the owners of the case premises and they are not involved in any unauthorized construction as alleged by the prosecution. However, as reiterated above, the instant case is at the initial stage of framing of charge and evidence has not yet commenced. Therefore, there is no material before this Court to adjudicate at this very initial stage as to whether the accused persons are responsible for unauthorized construction or not and as to whether they are the owners of the case premises or not. Such contention raised by the accused can only be adjudicated after completion of trial. Moreover, the accused persons will get opportunities to adduce evidence if they so desire in support of their contention. Considering such observation, this Court is of the opinion that the instant petition filed by the accused persons is liable to be rejected being premature and devoid of any merit.

The instant petition stands disposed of.

Fix 27-03-2025 for consideration of charge.

D/C by me

Senior Municipal Magistrate,

Senior Municipal Magistrate,

Kolkata, Dist.- Kolkata.

Kolkata, Dist.- Kolkata