

**Sessions Case No. 06 of 2024**

**Reg-06 of 2024**

**Present : Sri Madan Mohan Mishra**

JO no. WB00727

Order no. 14 dated 23.10.2024

Accused Sunandan Gurung and Dipankar Rai are produced from J/C.

Accused on bail Biswa Gurung and Pranay Tamang are present.

Ld. Prosecutor Md. Sadab is present.

No SR of Summons issued in the name of prosecution witnesses CSW-3 Sumiran Chettri and CSW-4 Saran Gurung received.

No prosecution witness is present.

Two separate bail applications have been filed by accused Sunandan Gurung and Dipankar Rai.

The bail applications filed by accused persons are taken up for consideration.

Heard learned advocates representing accused persons as well as learned prosecutor and perused the materials on the case record and in the case diary.

Learned advocates representing accused persons submit that there is gross contradiction in the observation made by the doctor at the time of admission of the victim at Darjeeling District Hospital wherein reference to sharp cutting weapon has been made in causing the deep cut injury on the scalp of the victim and the alleged eye witnesses refers to 'Lathi' in causing injuries and the Lathi has been seized in course of investigation. Accused persons are standing on same footing with the two accused persons enlarged on bail by Hon'ble Court on 16.05.2024. Accused persons have been languishing in custody for almost 10 months and prosecution under the influence of de-facto complainant has intentionally withheld the attendance of the two alleged eye witnesses till this day. Accused persons may be enlarged on bail on any condition.

Learned prosecutor opposed the bail application by submitting that the bail application of the accused persons has been refused on 22.08.2024 by Hon'ble Court and if the accused persons are enlarged on bail in the midst of trial wherein two eye witnesses are yet to be examined the trial of the case may be prejudiced.

Having considered the rival submissions raised by learned advocate representing accused persons and learned prosecutor in the light of the materials on the case record and in the case diary, it is found that the bail application of the accused persons has been refused by Hon'ble Court on 22.08.2024. I find force in the contention of the accused persons that prosecution under influence of defacto complainant has been withholding the attendance of two alleged eye witnesses scheduled to be examined on 07.10.2024 and this day. On 07.10.2024 inspite of service of summons witness CSW-4 Saran Gurung failed to attend court as witness and was reported by learned Prosecutor that he was sick and this day no SR of summons issued in the name of witness has been received. On the last occasion on 07.10.2024 it was reported by learned Prosecutor that CSW-3 Sumiran Chettri is in the service of Indian Army and could not attend Court and this day prosecution kept mum over the attendance of the witness. Taking note of the order of Hon'ble Court passed on 22.08.2024 by which the bail application of accused has been refused, I am not inclined to enlarge the accused persons on bail at the stage.

It is strange to note that accused persons are languishing in custody for more than 10 months and Police authority is sleeping over the matter of service of summons upon the witnesses.

Let the case be fixed for examination of prosecution witnesses CSW-3 Sumiran Chettri and CSW-4 Saran Gurung on 14.11.2024 as prayed by ld prosecutor.

Prosecution to take every steps to see the attendance of the witnesses CSW-3 and CSW-4 on the date fixed on 14.11.2024.

To 14.11.2024 for examination of prosecution witnesses CSW-3 and CSW-4.

Accused persons are remanded to J/C till 14.11.2024.

Dictated & Corrected by me

Additional Sessions Judge,  
1<sup>st</sup> Court, Darjeeling  
(In Charge)

Additional Sessions Judge,  
1<sup>st</sup> Court, Darjeeling  
(In Charge)