

Order No. 07  
Dated 28.01.26

Today is fixed for passing order upon the hearing of the discharge petitions filed on behalf of the accused persons which was concluded in presence of both the sides on the last date.

Three accused persons on court bail namely Sk. Sakir @ Bobby, Sourav Adhikary @ Mota and Ajoy Mondal are present before this court and have filed their respective haziras. The fourth accused person who is in custody namely Md Sahid @ Chikna Bikki is not brought from Correctional Home today.

The record is now taken up for passing order.

Ld. Advocates for the respective accused persons while moving their respective discharge petitions on behalf of the four accused persons identically submitted that the charge u/s 399 of the I.P.C. cannot be framed against the respective accused persons as only four accused persons have been charge sheeted in this case while the charge for the offence of being assembled for committing dacoity under sec can only be sustained if five or more accused persons had assembled at the P.O. for the purpose of committing dacoity which in the present case is not the case. Ld Advocate also identically submitted that the offences of sec. 25/27 of The Arms Act are Magistrate triable offences which this court cannot try and they prayed for discharging the accused petitioners from this case under sec. 227 of the Cr.P.C or alternatively for transferring this case to the court of Id ACJM Serampore for holding the trial of this case after referring to the citations of *Ram Baran & Ors. Vs State of U.P.* and *Somnath Bhattacharjee Vs The State of West Bengal*.

Ld. P.P. for the State raised objection to the submissions made by the Ld. Advocates for the respective accused persons and to their prayer for discharge of the respective petitioners in this case. He submitted that while it is true that only four accused persons have been charge sheeted for the offences of trying to commit dacoity in this case, it is also true that there were some other accused persons too who had done the same offences as the present petitioners but they were not caught and had managed to escape from the P.O. which is apparent from the materials in the CD. The ld Advocate prayed for framing charge against the accused persons.

Heard both the sides. Perused the discharge petition, referred citations and the CD. Considered.

It would be profitable to visit the relevant provision of law and the judgements of higher courts at this stage before venturing to adjudicate the prayer of the accused petitioner.

**Section 227 of the CrP.C. states that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.**

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**S.C. 117/2025**

J.O. Code : WB01302

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It is evident from the suo motu complaint filed by the complainant in this case that when he went with police force to the P.O. on receipt of source information on 27.5.2023, he spotted a group of 6/7 young men with motorcycle in a dark place there whispering among themselves and when the police started cordoning the area, the group got hint of the presence of police and started to flee at which the police managed to apprehend on chase, two of them namely Md Sahid @ Chikna Bikki and Sk. Sakir @ Bobby and seized arms from them. The F.I.R. further discloses that the above-named accused persons had confessed that they along with Chand Mohammad and 03/04 others had assembled there and were preparing to commit dacoity at the nearby petrol pump. It is thus apparent from the F.I.R. that there were in total 6/7 persons including the accused petitioners who had assembled at the P.O. to prepare to commit dacoity. The statements of the witnesses recorded u/s 161 of the Cr.P.C. too say that there were in total 6/7 persons in the group out of which two of them were apprehended at the spot. The statements of the apprehended persons found in the CD also says that they along with one Chand Mohammad and 3/4 others had assembled at the P.O. and were preparing to commit dacoity when they were apprehended by the police. The charge sheet filed by the I.O. in this case upon completion of the investigation of this case shows that two other accused persons namely Sourav Adhikary @ Mota and Ajoy Mondal were also arrested subsequently as they were also present in the said group on the relevant date and time but had managed to flee before being caught. The charge sheet further shows that upon completion of investigation the I.O. has concluded that one other accused namely Chand Mohammad of Moukhali was also present in the group but could not be arrested for which he has kept a provision in this case to submit supplementary charge sheet if he is arrested in future. It is thus clear from the above that there were in total five accused persons who had assembled to prepare to commit dacoity on the relevant date and time at the P.O. out of which the four accused petitioners have been caught and have been sent for trial by the I.O. Thus, the charge for the offence of sec. 402 of the I.P.C. can very well be applicable to the accused petitioners. Non-arrest of all the five accused persons in this case does not vitiate a charge of dacoity, when the materials in the CD prima facie establishes that all five of them had assembled for the purpose of committing dacoity. The Hon'ble Apex Court in *Ram Shankar Singh Vs State of U.P. (1956) SCR 650* has held that even when some accused are unknown or absconding, a charge of dacoity can be framed if evidence shows participation of five or more persons and in *State of Rajasthan Vs Ramdeo (2014) 13 SCC 189* has held that at the stage of framing of charge, existence of prima facie material indicating five or more participants is sufficient.

Thus, it is apparent from the above discussions that the respective petitions for discharge of the respective accused petitioners are without merit and is accordingly dismissed.

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Let the charge be framed against the accused persons in this case namely Sk. Sakir @ Bobby, Sourav Adhikary @ Mota, Ajoy Mondal and Md Sahid @ Chikna Bikki under section 399/402 of the I.P.C. and additionally be framed u/s 25(1A) of The Arms Act, 1959 against accused Md Sahid @ Chikna Bikki and Sk. Sabir @ Bobby.

The Superintendent of Dum Dum Central Correctional Home is directed to produce the accused Md Sahid @ Chikna Bikki physically on the date fixed.

To 27.02.2026 for production, appearance and framing of charge.

Let a copy of this order be sent to the Superintendent of Dum Dum Central Correctional Home for compliance.

**Dict. & Cort. by me.**

Sd/-

**A.S.J., 2<sup>nd</sup> Court, Serampore  
Hooghly.**

Sd/-

**A.S.J. 2<sup>nd</sup> Court, Serampore  
Hooghly.**

(G.R Case No. 1249/23)

Chanditala P.S FIR No.415/23 dated 27.10.23 u/s.399/402 IPC read with Sec.25/27 Arms Act.

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Hooghly.**

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Hooghly.**

**Memo No.....**

**Dated .....**

**Copy forwarded to : The Superintendent of Dum Dum Central Correctional Home for compliance.**

**A.S.J. 2<sup>nd</sup> Court, Serampore  
Hooghly.**