

**S.T Case No.280 of 2023**  
**CNR No. WBHW01-006267-2023**  
**Present : Sri Plaban Mukherjee ( J.O Code : WB01427 )**

Order No.03

Dated : 02.05.2024.

Today, the date is fixed for appearance and production of the accused persons; and hearing of all petitions.

Out of nine accused persons, one accused person on Court Bail, namely, Noor Alam @ PTS Raja is present by filing hazira.

Other eight accused persons, namely, Shahid Parvez, Raja Ram @ Raja Rao, Raja Kr. Paswan @ Raja, Md. Taufik @ Mani, Sk. Laltu, Md. Naushad, Sk. Imtiaz @ Rahul and Hasan Raja @ Tipu are produced from J/C, they are taken into custody and remanded to J.C till the next date.

Ld. PP-in-charge is present with one witness, namely, Arif Ahamed Khan.

At this stage, Ld. Advocate Sri Samrat Kar files fresh vakalatnama in respect of the accused person, namely, Md. Naushad.

All the four sets of Ld. Advocates for the accused persons are also present.

At this stage, Ld. PP-in-charge files a petition praying for framing additional charges under the Arms Act against some of the accused persons and submitted that on earlier occasion he has already filed an application for framing additional charges, but today he wants to not press the said petition upon filing of a fresh petition as there were some rectifications in the said petition and also he intends to add charge under section 25(1B)(a)/27(3)/35 of the Arms Act against some accused persons. Copy served.

Ld. P.P. in charge is permitted to not press his petition dated 30.04.2024 by putting his endorsement on the said petition.

Now, the petition praying for additional charges filed today is taken up for hearing.

Ld. PP-in-Charge submitted that he intends to frame charge under sections 25(1B)(a)/27(3)/35 of the Arms Act against five accused persons, namely, Shahid Parvez, Raja Ram @ Raja Rao, Raja Kr. Paswan @ Raja, Md. Taufik @ Mani and Sk. Laltu by relying on the seizure-list dated 26/11/2021. It is further submitted that the investigating officer has also submitted charge-sheet in these sections, but due to inadvertence, no charge under these sections was proposed by him.

Ld. Advocate Sri Subhasis Dutta submitted that no sanction of the District Magistrate, Howrah has yet been obtained by the I.O of this case to institute prosecution under this Act.

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In reply, Ld. PP-in-Charge, at this stage, fails to show any document through which, necessary sanction was sought for by the I.O of this case.

However, I am of the considered view that mere procedural deficiency shall not be considered as a hindrance in the path of framing additional charges under the above noted sections of the Arms Act and moreover, the seizure-list dated 26/11/2021 prima facie indicates materials in favour of framing the charge under sections 25(1B)(a)/27(3)/35 of the Arms Act.

Under the above facts and circumstances, the prayer of the Ld. PP-in-Charge for framing additional charge under sections 25(1B)(a)/27(3)/35 of the Arms Act is hereby allowed.

Now, the case record is taken up for consideration of additional charge.

The learned PP-in-Charge opens his case in support of the additional charge.

Perused the case diary and other materials on record. Considered.

On perusal of the materials on record, it appears that there are sufficient grounds for presuming that the accused persons, namely, Shahid Parvez, Raja Ram @ Raja Rao, Raja Kr. Paswan @ Raja, Md. Taufik @ Mani and Sk. Laltu have committed the offence punishable under sections 25(1B)(a)/27(3)/35 of the Arms Act and as such additional charge is framed against the accused persons, namely, Shahid Parvez, Raja Ram @ Raja Rao, Raja Kr. Paswan @ Raja, Md. Taufik @ Mani and Sk. Laltu punishable under sections 25(1B)(a)/27(3)/35 of the Arms Act, apart from the the charge dated 01/04/2024 under section 302/120B/34 I.P.C.

The additional charge has been written in a separate sheet. Let the same be kept with the case record.

The particulars of the additional charge have been read over and explained to each of the accused persons, in vernacular, to which each of them pleads not guilty by saying “Main Nirdosh Hoon” and claims to be tried .

Now, the petition dated 30/04/2024, filed on behalf the three accused persons, namely, Shahid Parvez, Raja Ram @ Raja Rao and Raja Kr. Paswan @ Raja praying for supplying the copy of some documents as well as the CCTV footage, collected during investigation as per the seizure-list dated 05/12/2021 is taken up for hearing.

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Ld. Advocate Sri Partha Santra submitted that at the time of supplying copy under section 207 Cr.P.C, some documents along with the CCTV footage, seized by dint of seizure-list dated 05/12/2021, were not supplied to the accused persons and for that reason, he prays for supplying those documents for setting up his defence in this case.

Ld. PP-in-Charge raised no objection against the prayer of the accused persons and submitted that he is ready and willing to supply the necessary documents and also submitted that the CCTV footage was seized vide the seizure-list dated 05/12/2021 and the said footage is preserved in three pen drives, which are kept in P.S Malkhana.

Heard all sides and considered.

It is the primary right of the accused person to be served with all the copies of the documents, upon which, the prosecution intends to rely in course of trial.

In view of the above, Ld. PP-in-Charge is requested to supply copy of the documents to the Ld. Defence counsel as pointed out by him for affording him reasonable opportunity to defend the accused persons of this case.

In addition to the above, the investigating officer of this case is directed to supply four copies of the CCTV footage, which were seized by dint of seizure-list dated 05/12/2021 to the Ld. PP-in-Charge by the next date fixed for the purpose of supplying the same to the four sets of Ld. Advocates representing the accused persons.

The investigating officer is further directed to take all the precautionary measures with the assistance of technical experts to supply the copy of the above noted CCTV footage so that the primary evidence remains in tact.

Let a copy of this order be sent to the I.O of this case at once for compliance.

At this stage, Ld. Advocate for the accused persons, namely, Shahid Parvez, Raja Ram @ Raja Rao and Raja Kr. Paswan @ Raja files a petition under section 231 (2) Cr.P.C praying for deferral of cross-examination of C.S.W-1 Arif Ahmed Kha till the examination of C.S.W-2 to C.S.W-6. Copy served.

Now, the petition under section 231 (2) Cr.P.C is taken up for hearing.

Ld. Defence counsel submitted that C.S.W-2 to C.S.W-6 are all allegedly eye witnesses to the alleged incident and C.S.W-1 came to know about the incident from C.S.W-2 to C.S.W-6. It is further submitted that his defence will be disclosed during cross-examination of C.S.W-1 i.e. the de facto complainant and for that reason, the prosecution will try to fill up their lacuna during the examination of C.S.W-2 to C.S.W-6. It is further submitted that C.S.W-2 to C.S.W-6 are all witnesses of the same

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occurrence and they will depose in the same line and for that reason, the accused persons will be highly prejudiced if their prayer under section 231(2) Cr.P.C is not allowed.

Ld. PP-in-Charge raised vehement objection against such prayer and submitted that a prayer for deferral of cross-examination should not be allowed merely on the ground of filling of lacuna. It is further submitted that the Hon'ble High Court at Calcutta while rejecting the bail application of one of the accused persons of this case, namely, Md. Nausad @ Sk. Nowsad in CRM (DB) No.1001 of 2024 has been pleased to direct the prosecution to examine the vital eye witnesses i.e. C.S.W-4 and C.S.W-5 at the earliest. In support of his submission, Ld. PP-in-Charge files a downloaded print out of solemn order dated 09/04/2024, passed in CRM (DB) No.1001 of 2024.

Heard all sides. Considered.

Section 231 of Cr.P.C gives a discretion to the Judge to permit cross-examination of any witness to be deferred until any other witness or witnesses have been examined, but that does not mean that the accused has a right to ask for deferring the cross-examination in wholesale way on the plea that otherwise the prosecution may take the chance of filling up the lacuna in its case that may be disclosed in course of cross-examination of its witnesses. It is needless to mention that ordinarily it is for the prosecution to decide for itself as to in which order, it will examine its witnesses for proving its case. Since it is the burden of the prosecution to prove its case, ordinarily it should be for the prosecution to decide in which manner and in what order it will produce its evidence before the Court subject to the control of the substantive and procedural laws.

In this case, the accused persons took the plea that if each witness is examined and cross-examined before the next witness is produced in that event, there will be much opportunity for the prosecution to fill up the lacuna in its case as may be disclosed in course of cross-examination of any witness, through the lips of the subsequent witnesses and therefore, the defence should be given the opportunity to defer the cross-examination of all eyewitnesses i.e. C.S.W no.1 to 7 till their examination-in-chief are completed.

It also appears that at the time of the hearing of the bail application, the Hon'ble High Court has been pleased to reject the prayer for bail application of one accused person, namely, Md. Nausad @ Sk. Nowsad in CRM (DB) No.1001 of 2024 and at the same time, the Hon'ble Court has been pleased to direction the prosecution to examine the vital eye witnesses i.e. C.S.W-4 and C.S.W-5 at the earliest.

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Under the above facts and circumstances, I am not inclined to allow the petition filed by the accused persons u/s.231(2) Cr.P.C.

Hence, the petition, filed under section 231(2) of Cr.P.C by the accused persons, namely, Shahid Parvez, Raja Ram @ Raja Rao and Raja Kr. Paswan @ Raja is rejected on contest without cost.

Fix 13/05/2024 for production, appearance and supply of copy of CCTV footage.

Dictated & Corrected by me.

A.S.J, 1<sup>st</sup> Court, Howrah

Additional Sessions Judge,  
1<sup>st</sup> Court, Howrah.