

**Sessions Trial Case No. 307 of 2017**

Order No. 11,

Dated : 12.01.2018.

Both the accused persons are produced from custody and remanded to J.C till date.

Ld. Advocate for the accused Ashok Hirawat files the application u/s 91 of the Cr.P.C stating that the accused was produced by the investigating officer for the medico-legal-examination, but the investigating officer did not produce the reports of the medical examinations dated 11/08/2017 and 19/08/2017. So, the accused persons pray for direction upon the prosecuting agency to supply the copy of the medical reports of those dates.

Ld. PP contested the application by raising oral objection stating that though the accused persons were produced before the medical officer on those two dates, they could not be medically examined due to some reasons. Subsequently, on 31/08/2017, when they were produced before the medical officer, they refused to be examined medically. So, there is no question of supply the copy of the medico-legal-examination reports of the dates mentioned above.

Perusing the C.D and the materials on record, I do not find any reason to disbelieve the submission of the Ld. Prosecution. Moreover, the accused persons file the xerox copy of certain portion of note-sheet of C.D, which strange enough to be available to the accused persons. From those documents, it can be presumed that they are well aware regarding the each and every portion of the contents of the C.D. So, whether there is any such report exists or not, it cannot be beyond the knowledge of the accused persons. In this situation, I am not inclined to allow the prayer of the accused persons.

Hence, it is

ORDERED

That the petition u/s 91 Cr.P.C is rejected on contest without cost.

Dictated & Corrected by me.

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

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

Order No. 12,

Dated 12/01/2018,

Two accused persons are produced from custody and remanded to J.C till date.

Ld. Advocate for the accused person, namely, Ashok Hirawat files an application praying for bail stating that the accused has fixed residence and there is no chance of his absconding.

Ld. PP-in-Charge raised strong objection stating that the offence is grievous in nature and crime against society. So, there is every chance of absconding.

Heard both sides. Considered.

Perusing the materials on record and the C.D, it appears that the offence is of grievous nature and there is every chance of absconding. So, the prayer for bail is rejected at this stage.

Return C.D.

Dictated & Corrected by me.

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

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

Order No. 13,

Dated 12/01/2018,

Ld. Advocate for the accused person, namely, Ashok Hirawat files an application u/s 227 Cr.P.C praying for discharge of the accused person.

Ld P.P.-in charge is present. He opened the case stating the materials on record on which prosecution wants to rely and submits that there are sufficient materials to frame charge against the accused person.

Now, the question arises as to whether the present accused persons actually committed an offence as mentioned in the charge-sheet or they are liable to be discharged.

At the stage of framing of charge, the court has no scope to go into the merits of the evidence collected by the prosecution minutely and meticulously and to consider in details and weigh the facts in a sensitive balance. Whether the facts if proved, would be in comparable with the innocence of the accused persons or not. The standard of test and judgment which is to be finally applied before recording a finding regarding guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter u/s 227 & 228 of the Criminal Procedure Code.

At this stage the court has no scope to see whether there is sufficient ground for conviction of the accused persons or the trial is sure to end in his conviction. Further if there is strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused persons. The crucial consideration for the purpose of determining whether there is sufficient ground to proceed against the accused persons is whether on record, if un-rebutted, is such on the basis of which a conviction can be said to be reasonably possible. All these would naturally depend upon the facts of each case and it is difficult to lay down a ruling of universal application.

The condition for framing charge u/s 228 Cr. P.C are 1) Presumption of the commission of an offence on the material placed before the court i.e the existence of a prima facie case and 2) the offence is triable exclusively by a court of Sessions.

At this stage the Sessions Judge is not required to consider the pros and cons of the matter and weigh the evidence as if the Court is conducting a trial. Further the framing of charge does not debar the trial from coming to the conclusion later on that a lesser offence is made out on the evidence on record. At the stage of framing of charge, the question of admissibility of evidence or the reliability or worth of the materials on

record does not arise . Further according to law, as it stands now if the materials on record show that there is simply a probability of the accused being convicted, a charge may be framed for decision on trial. If there is materials on record, going in favour of the accused, they can be used at the time of the trial by the defence.

At this stage the prosecution is not to prove the case against the accused beyond all reasonable doubt which is to be proved at the trial.

From the materials on record & C.D, it appears that the de facto complainant Samta Golchha lodged the complaint to the effect that the accused Ashok Hirawat raped her on 4<sup>th</sup> August 2017 .He took her from M.G.Road on the pretext to perform Puja so that her husband's problem as regards the loss of the job will be solved. At the time of performing Puja, this accused person raped her with the help of the another accused person

In this case from the materials on record, it appears that the complaint has been lodged the complainant as his brother sustains gun-injury, which resulted his death.

So, considering all aspect I am of the view that the prosecution has proved the allegation prima facie against both the accused persons to frame the charge against them u/s 376D I.P.C.

To 20/01/2018 for framing of charge.

Dictated & Corrected by me.

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

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

Order No. 14.

Dated 12/01/2018.

Ld. Advocate for the accused person, namely, Pijush Banerjee verbally submits that in spite of the direction of this Court, the Superintendent of Howrah Correctional Home is not providing sufficient medical treatment to him and his leg has got infectious. So, considering all aspects, I am of the view that an explanation should be called from the the Superintendent of Howrah Correctional Home describing what

type of treatment is being provided to the accused Pijush Banerjee for his infectious leg.

Let a copy of this order be sent to the Superintendent of Howrah Correctional Home for his information and compliance.

To date i.e. 20/01/2018 for report by the Superintendent of Howrah Correctional Home positively.

Dictated & Corrected by me.

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

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

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Order No. 14,

Dated 12/01/2018,

Ld. Advocate for the accused person, namely, Pijush Banerjee verbally submits that in spite of the direction of this Court, the Superintendent of Howrah Correctional Home is not providing sufficient medical treatment to him and his leg has got infectious. So, considering all aspects, I am of the view that an explanation should be called from the the Superintendent of Howrah Correctional Home describing what type of treatment is being provided to the accused Pijush Banerjee for his infectious leg.

Let a copy of this order be sent to the Superintendent of Howrah Correctional Home for his information and compliance.

To date i.e. 20/01/2018 for report by the Superintendent of Howrah Correctional Home positively.

Sd/

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

Memo No.

Dated 12/01/2018.

Copy of this order be forwarded to the Superintendent of Howrah Correctional Home for information and compliance.

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