

10.07.23

Today is fixed for production of all the five accused persons, awaiting order of the Hon'ble High Court, Calcutta, hearing of the petition u/s. 188 of Cr.P.C. r/w sections 205/207 of Cr.P.C. and hearing of the petition of alteration of charge filed by the Ld. Spl. PP.

One hazira is being filed by the Ld. Advocate for the accused persons, namely, Sachin Toshniwal and Prosenjit Hari.

Another lawyer's hazira is filed on behalf of accused person, namely, Apu Kumar Shaw along with a fresh vakalatnama of Apu Kumar Shaw.

Ld. Spl PP is also present.

Ld. Spl PP has also filed a separate application praying for pass an order in the light of direction passed by the Hon'ble High Court, Calcutta. Ld. Spl. PP also filed a server copy of order dated 05.07.23 in connection with CRR 944/2023 and as per direction of the Hon'ble High Court, Calcutta the prosecution produced defacto complainant of this instant case, namely, Gurjat Singh for his evidence. Ld. Spl PP also contended in his petition that a petition for alteration of charge has been filed by the State on the earlier occasion if the charge is altered the court can proceed with the evidence today itself in compliance of the order of The Hon'ble High Court, Calcutta.

I have perused the server copy of the order dated 05.07.23 of The Hon'ble High Court, Calcutta passed in CRR no.944/2023.

The Hon'ble Court has been pleased pass the following directions;-

**'Mr. Nandy, learned advocate appearing for the State has handed over the entire clone copies of two heard discs to the learned Advocate appearing for the parties, on a covering letter, which reflects the same was received from Director-in-Charge CS-DEEL/CID, West Bengal to the Officer-in-Charge Cyber Crime Police Station dated 4.07.2023.**

**The grievance of the petitioners was in respect of the said two clone copies having not been served upon them.**

**Having regard to the fact that there was an earlier direction of the Division Bench for framing the charges within three months, I find that learned ACJM, Bidhannagar did not have any other option except to frame the charges. On a earlier occasion, Mr. Nandy insisted that the documents were completely served. However this court insisted Mr. Nandy, learned Advocate to give another set and not to prolong the issue considering the gravity of the offence and the accused person being in custody. Records reflect two of the accused persons preferred application under Section 239 of the Code of Criminal Procedure. Out of the three**

petitioners who preferred the application before this Court, petitioner no.2, Sachin Toshniwal preferred an application under Section 239 of the Code of Criminal Procedure for discharge. Learned Magistrate dismissed the said application and proceeded to frame the charges. No application under Section 239 of the Code of Criminal Procedure was preferred on behalf of the petitioner nos.1 and 3.

At this stage, when charge has already been framed and when another co-accused Gurjot Singh intends that the trial should proceed as all the accused person are in custody, I am of the view that as the petitioners did not prefer any application under Section 239 of the Code of Criminal Procedure at the relevant stage and it is only after change of counsel such a decision has been taken, the petitioners will not be prejudiced if the examination of the witnesses commence.

Earlier this Court passed an interim order in respect of the proceedings pending before the learned ACJM, Bidhannagar as the clone copies of the hard discs were to be handed over. I am of the view that the proceedings should not be stalled any more.

State is directed to produce the CSW 1 on 10<sup>th</sup> July, 2023 for conducting the examination-in-chief.

Mr. Nandy submits that whatever documents have been relied upon by the prosecution, whole of the same has been handed over in the clone copies of the two hard discs. In case the accused persons are able to satisfy the court that there is deficiency in such submission it would be for the accused/ petitioner to subjectively satisfy the trial court regarding the same after inspection of the hard discs.

The purpose of the present revisional application related to quashing of the proceedings. I am of the opinion in view of the allegations, foundations and the materials collected by the Investigating Agency at this stage without cross-examination of the witnesses it is not possible to ascertain regarding the truth, falsity of the versions of the prosecution witnesses or the materials collected so far by the Investigating Agency and to be relied upon by the prosecuting agency.

Needless to state that the charges in this case has serious international ramification as innocent citizens of Germany, Ireland, Australia, USA, UK, Canada and New Zealand have been defrauded.

No further adjournment should be granted to either of the parties. The special public prosecutor conducting the case would produce the materials , exhibits and documents to be relied upon through the witnesses who would be present on the date so fixed.

**With the aforesaid observations, CRR 944 of 2023 is disposed of.**

**In the midst of the order being dictated, learned counsel appearing for the petitioners repeatedly prayed for stay of the implementation of the order passed by this Court, the same is refused.**

**Pending application, if any, are consequently disposed of.**

**All parties shall act on the server copy of this order duly downloaded from the official website of this court.....'**

Ld. Counsel for the accused person, Raneet Acharya submits before this court that on 20.04.23 he filed an application u/s 188 of Cr.P.C. r/w section 207 of Cr.P.C. and prior to starting evidence of PW1 this petition is required to be disposed of and he also prayed for expedite commence of trial.

Ld. Spl PP also filed a written objection against the application. Let it be kept with the record.

Ld. Counsel for the accused persons, namely, Sachin Toshniwal and Prosenjit Hari files a petition prayed for issuing direction upon the prosecution as well as the investigation agency to provide the cloned copies of the electronic devices seized by the investigating agency as well as other articles and documents as mentioned in the petitions dated 13.01.23 and 17.04.23 to the accused and until then the evidence of CSW-1 may be prayed to be adjourned. Ld. Spl. PP received the copy. Let it be kept with the record.

On the other hand Ld. Counsel for the accused persons, namely, Prasenjit Hari, Apu Kumar Shaw and Sachin Tashniwal, who were petitioners of the case in CRR no.944/23 of the Hon'ble High Court, Calcutta, submitted before this court by filing a petition that the above named accused persons preferred a Special Leave Petition (SLP) before the Hon'ble Supreme Court of India on 07.05.23 which has been registered vide SLP (Criminal) diary no.26889 of 2023 and that intimation was received from Ld. Advocate on record in the said SLP pending before the Hon'ble Supreme Court of India and accordingly he prayed for deferring the evidence of CSW-1 of this case as scheduled to be recorded today i.e. on 10.07.23. He also filed copy of the letter of the Ld. Advocate, Supreme Court of India. Ld. Spl. PP received the copy with an objection. Let it be kept with the record.

Ld. Counsel for the accused persons is hereby directed to submit a specific order of the Hon'ble Supreme Court of India by the next date, other wise this court will proceed the case in view of direction of the Hon'ble High Court, Calcutta, in CRR no.944/23.

Today on behalf of accused person, namely, Raneet Acharya one application is filed praying for direction to the Superintendent of DDCCH to produce these accused persons before the Ld. Additional District and Sessions

Judge, 1<sup>st</sup> Court, at Srerampore, Hooghly on 03.08.23 to attend final hearing of divorce application being Mat Suit no.54/22.

Heard. Perused the petition. Considered.

On perusal of contention of this petition as submitted on behalf of the above mentioned accused person, I am of view that this court has no jurisdiction to interfere with the application since this petition is misconceive one. Hence, it is rejected.

All the petitions pending before this court will be heard on the next date after receiving any specific order of the Hon'ble Supreme Court of India in relation to the Special Leave Petition as mentioned above from the accused persons.

Fix 21.07.23 for production of the accused persons, submitting of the specific order of the Hon'ble Supreme Court of India by the accused persons as directed, hearing the petition u/s 188 of Cr.P.C. r/w 207 of Cr.P.C., hearing of the petition submitted by the Ld. Counsel for the accused persons, namely, Sachin Toshniwal and Prosenjit Hari and petition for alteration of charge and evidence of CSW-1.

Dictated and corrected by me.

ACJM, Bidhannagar

ACJM, Bidhannagar