

Sessions Case No.85 of 2021
CNR No. WBUD01-003624-2021
J.O Code No. WB00891

Order No. 17
Dated 01/09/2022

Today is fixed for production of the accused, further hearing of the petition under Section 227 of Cr.P.C and passing orders.

Sole accused *Krishna Kamal Adhikary @ Rana Adhikary* is physically produced from J/C. He is represented by his Ld. Advocate who is present and has filed Hazira.

Ld.Public Prosecutor is present and has filed hazira on behalf of the State.

CD has been produced.

The petition under Section 227 of Cr.P.C filed on behalf of the accused on 13.06.2022 is taken up for further hearing in presence of both sides.

At the very outset, Ld. Advocate for the accused submits that the CRR-1944 of 2022 filed by the accused before the Hon'ble High Court at Calcutta has been disposed of on contest by Judgment dated 17.08.2022. A photocopy of the certified copy of the said Judgment has been filed.

Referring to the petition under Section 227 of Cr.P.C, Ld. Advocate for the above named accused prayed for discharge of the accused on the ground that the I.O. had submitted charge-sheet under Section 363/365/420/302/201/376 of IPC without verification of the tower location of the seized mobile phones. Moreover, there is contradiction in between the post-mortem report and the statements of the witnesses recorded under Section 161 of Cr.P.C. He also submits that search and seizure conducted by the I.O. of this case at the time of investigation, was not in accordance with law.

Raising strong objection to the same, Ld. Public Prosecutor referring to his written objection dated 12.08.2022 contended that there are adequate incriminating materials showing the involvement of the present accused in commission of double murder and rape. The matter regarding the detection of the tower location of the seized mobile phones had already been agitated earlier. By the judgment dated 17.08.2022 passed by the Hon'ble Court, the accused had already been given the opportunity to prove the same at the time of trial in course of adducing defence witness. Contending that that the accused shall get the benefit if the search and seizure of this case has not been made in accordance with

Contd..

Continued Order No.17

the provisions laid down in the Cr.P.C., he prays for rejection of the petition under Section 227 of Cr.P.C. summarily.

Seen the materials on record. Also seen the previous Orders passed by this Court. Also seen the Judgment of the Hon'ble Court dated 17.08.2022 passed in CRR-1944 of 2022 and the observations made therein .

This is a case where allegation is that on 12.05.2021 on *Ram Ranjan Sarkar* aged about 75 years had lodged a written complaint before the Itahar PS alleging *inter alia* that the present accused being the resident of his village had taken a sum of Rs. 4 lakhs from him about a year ago with an assurance to secure a job for his daughter-in-law in the nursing branch of the Health department of the Government. Thereafter, on 08.05.2021 at about 07:00 p.m. in the evening, the accused arrived at his house and convinced his son and daughter-in-law to go to Siliguri with him for the purpose of interview for the said job. Subsequently, on 09.05.2021 though the accused returned back to his house, his son and daughter-in-law did not return and were missing. On the basis of such complaint, Itahar PS case no. 224/21 dated 13.05.2021 under Section 363/365/420 of IPC was initiated. Then during investigation, on the leading statement of the accused, their dead bodies were recovered from the house of one *Pinaki Bose* of Vidyasagar Pally. It was detected that the daughter-in-law of the defacato-complainant was also raped. Several articles including the wearing apparels of the deceased persons, offending weapon, mobile phones and sum of Rs. 10,000/- were recovered, some of which had been sent for forensic examination and DNA profiling. Thereafter, finding prima-facie involvement of the accused, charge-sheet was submitted within the statutory period for the offences, u/s 363/365/420 IPC with adding section 302/201/376 of IPC. Subsequently, supplementary charge-sheet had also been filed on 17.06.2022, copy of which has been served upon the prosecution as well as the accused.

The matter regarding the verification of call details and tower location of the seized mobile phones has already been dealt with by Order dated 19.05.2022. The same was also considered by the Hon'ble Court by the Judgment dated 17.08.2022 in CRR-1944 of 2022.

Contd..

Continued Order No.17

Upon consideration of the materials on record, I find substance in the submissions advanced by the Ld. Public Prosecutor to hold that the accused shall get the benefit if the prosecution fails to prove the allegations against the present accused beyond all reasonable doubt. If in course of trial, it appears that search and seizure had not been conducted in contravention with the provisions laid down in the Cr.P.C for which the accused has been prejudiced, he is entitled to avail benefit due to the same and shall be absolved from the charges against him. At this initial stage when charge is yet to be framed, based on the aforesaid submissions, it cannot be concluded that there are no sufficient grounds for proceeding against the accused and thus, he is entitled to be discharged from this case. On the contrary, upon perusal of the materials on record, it appears that there are adequate incriminating materials that would justify framing of charge against this accused.

Therefore, the petition under Section 227 of Cr.P.C is devoid of any merit and is rejected on contest and disposed of.

Fixing **19.09.2022** for production and framing of charge.

Accused is remanded to J/C till that date.

D/C by me.

ADJ, FTC-II
Raiganj, Uttar Dinajpur

Addl. Sessions Judge
FTC-II, Raiganj.

Contd..