

Present: Dr. Amit George, Mr. Kartickay ... vs In Item Nos. 80, 81, 82 Mr. Ravi Sharma, ... on 31 July, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 661/2023, CRL.M.A. 2594/2023,
7682/2024 & CRL.M. (BAIL) 642/2024

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CRL.REV.P. 1226/2023 & CRL.M.A. 31243/
CRL.REV.P. 1229/2023 & CRL.M.A. 31263/
CRL.REV.P. 1230/2023 & CRL.M.A. 31270/
CRL.REV.P. 360/2023

Present:

Dr. Amit George
Shanker & Mr. D
for petitioner
Mr. Adarsh Kuma
Mr. Devesh Kuma
Ashutosh Mani T
Mr. Kaushlendra
in Item Nos. 80
Mr. Ravi Sharma
Praphull Kumar,
Madhulika Rai S
in Item No. 83

Mr. Ravi Sharma
Praphull Kumar,
Madhulika Rai S
in Item Nos. 79
Mr. Kanhaiya Si
Prasanna, Mr. A
Adv. for R2 in
Mr. Adarsh Kuma
Mr. Devesh Kuma
Ashutosh Mani T
Mr. Kaushlendra
Item No. 79
Mr. Adarsh Kuma
Mr. Devesh Kuma
Ashutosh Mani T
Mr. Kaushlendra
in Item No. 83

CRL.M.C. 661/2023 and connected matters

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CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORD

% 31.07.2024

1. The present petitions are filed assailing the orders dated 22.12.2022, 09.01.2023, 13.01.2023 passed by the learned Special Judge, CBI-19 (PC Act), RACC, New Delhi in Case No. 20/2022, and CC No. 28/22.

2. FIR No. 391/2021 dated 29.09.2021 registered at Police Station Ramgarh Tal for offence under Section 302 of the Indian Penal Code, 1860 ('IPC') was registered at the behest of the complainant, who is the wife of the deceased namely, Manish Gupta. It is alleged that the deceased visited Gorakhpur on 27.09.2021 and stayed in Hotel Krishna Palace. It is alleged that thereafter, in the early hours of 28.09.2021 at around 12 AM, six policemen entered the hotel room and misbehaved with the deceased, and when the deceased protested, he was badly beaten and later succumbed to his injuries and died. Consequently, the FIR No. 391/2021 dated 29.09.2021 was registered against 3 police officials, namely, SHO Jagat Narayan Singh/Accused No. 1, SI Akshay Mishra/Accused No. 2, SI Vijay Yadav/Accused No. 3 and 3 unnamed police officials.

3. The investigation was initially conducted by the Local Police/Special Investigation Team ('SIT'), Kanpur. During the course of investigation by the SIT, the other 3 unnamed accused were identified as SI Rahul Dubey/Accused No. 4, Head Constable Kamlesh Singh Yadav/Accused No. 5, and Constable Prashant Kumar/Accused No. 6. The complainant had preferred a Criminal Writ Petition before the Hon'ble Supreme Court of This is a digitally signed order.

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4. It is stated that during the pendency of the proceedings before the Hon'ble Supreme Court of India, a notification was issued by the Union Government, pursuant to which the CBI registered an FIR No. RC0532021S0012 dated 02.11.2021 at Police Station SCB Lucknow. The Hon'ble Supreme Court vide order dated 12.11.2021 in WP (Crl) 436/2021, directed that the trial be conducted by the CBI Court at Delhi, upon the completion of investigation and submission of the final report under Section 173(2) of the Code of Criminal Procedure, 1973 ('CrPC').

5. Charge sheet in the present case was filed on 06.01.2022.

6. The learned Special Judge, CBI-19, Rouse Avenue Courts, New Delhi vide order dated 22.12.2022 disposed of the application filed by the complainant under Section 301(2) of the CrPC. The learned Trial Court observed that the counsel for the complainant cannot be given an opportunity to make any oral submissions on charge. It was observed that the private counsel engaged by the complainant shall act under the directions of the Public Prosecutor for CBI, and may file written argument after the defence evidence is closed.

7. The learned Trial Court vide order dated 09.01.2023 (hereafter 'impugned order') in CC No. 28/22 framed charges against all the six accused and observed as under:

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 00:01:44 "1. The charge under section 302 of Indian Penal Code is to be framed only against the accused Jagat Narayan Singh.

2. The charge under sections 323/34 or in the alternative under sections 325/34 of Indian Penal Code are to be framed against the accused Jagat Narayan Singh, Akshay Mishra and Prashant Kumar.

3. The charge under section 201/34 of Indian Penal Code against the accused Jagat Narayan Singh and Akshay Mishra

4. The charge under section 218 read with sections 149 and 120-B of Indian Penal Code against all the six accused persons.

5. The charge under section 506 read with sections 149 and 120-B against all of the six accused persons."

8. The learned Trial Court vide order dated 10.01.2023 in CC No. 28/22 enlarged Accused Nos. 2-6 on bail, while specifically noting that all the offences for which charges against Accused Nos. 2-6 have been framed are bailable in nature.

9. The learned Trial Court vide order dated 13.01.2023 in CC No. 28/22 passed a formal order of charge against all the six accused persons.

10. The complainant filed the petition under Section 482 of the CrPC, in CRL. M.C. 661/2023 seeking setting aside of the order dated 22.12.2022 essentially on the ground that the complainant was denied the opportunity to address oral arguments.

11. Accused No. 5 filed a petition under Section 397 read with Section 401 and 482 of the CrPC, in CRL.REV.P 1226/2023, seeking setting aside of the impugned order and formal order on charge dated 13.01.2023 passed by the learned Trial Court, in so far as they relate to framing of charges under Section 218 read with Sections 120-B and 149, and Section 506 read with Sections 120-B and 149 of the IPC.

12. Accused No. 2 and Accused No. 6 filed a petition under Section 397 read with Sections 401 and 482 of the CrPC, in This is a digitally signed order.

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13. Accused No. 3 and Accused No. 4 filed a petition under Section 397 read with Section 401 and 482 of the CrPC, in CRL. REV. P. 1230/2023, seeking setting aside of the impugned order and formal order on charge dated 13.01.2023, passed by the learned Trial Court, in so far as they relate to framing of charges under Sections 218 read with Sections 120-B/149 and Section 506 read with Sections 120-B/149 of the IPC against Accused Nos. 3-4.

14. CBI, through its director, filed a petition under Section 397 read with Section 401 and 482 of the CrPC, in CRL. REV. P. 360/2023 seeking framing of charges under Section 302 of the IPC against all the six accused persons, apart from the other charges framed vide the impugned order passed by the learned Trial Court.

15. It is not disputed that the learned Trial Court, by relying upon the judgment passed by the Hon'ble Apex Court in the case of Rekha Murarka v. State of West Bengal and Another :

(2020) 1 SCC (Cri) 496, though permitted the petitioner 'Meenakshi Gupta' to engage a private counsel to assist the prosecution, however, gave no right to advance oral arguments.

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16. This Court, while issuing notice on 01.02.2023 in CRL.M.C. 661/2023, noted that the judgment passed by the Hon'ble Apex Court in the case of Jagjeet Singh v. Ashish Mishra & Ors. : (2022) 9 SCC 321 has not been appreciated in correct perspective.

17. Serious allegations have been made in the present case against the Police officials which led to the transfer of the investigation to the CBI. The petitioner 'Meenakshi Gupta' has alleged that her husband was beaten to death by the Police officials.

18. The Hon'ble Apex Court has recognised the right of the victim to be heard in the proceedings before the learned Trial Court.

19. Arguments were heard on behalf of the parties.

20. After some arguments, the learned counsel for the parties including the CBI, without going into the aspect whether the learned Trial Court fell in error in not granting the opportunity to the victim's wife to be heard, have agreed that the matter can be remanded back for a fresh consideration and they have no objection if the petitioner 'Meenakshi Gupta' is heard before any order for framing of charges is passed.

21. However, the concern raised by the learned counsel for the petitioners in CRL.REV.P. 1226/2023, CRL.REV.P. 1229/2023, CRL.REV.P. 1230/2023, is that the petitioners were granted bail since no charges were framed against them under Section 302 of the IPC.

22. He submits that if the order framing charge is set aside, the case would be restored to its original position, meaning thereby that the petitioners have been chargesheeted for offence under This is a digitally signed order.

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23. The learned counsel for the CBI, on instructions, submits that no action is intended to be taken against the petitioners till such time as the final order is passed by the learned Trial Court pursuant to the remand.

24. The bail was granted by the learned Trial Court considering that the charges against the petitioners are bailable in nature, and that none of the petitioners are charged under Section 302 of the IPC.

25. Concededly, the petitioners, at this stage, are admitted on bail. Chargesheet has been filed under various sections including Section 302 of the IPC. The bail was granted noting that the charges framed against the petitioners were bailable in nature. Admittedly, no charges have been framed against the petitioners, at this stage, under Section 302 of the IPC.

26. The learned counsel for the petitioner relies upon the judgment passed by the Hon'ble Apex Court in the case of Akhil Gogoi v. The State (National Investigation Agency) and Ors. :

MANU/SC/0402/2023. In that case, the learned Trial Court was directed to hear the parties afresh and pass an order on framing of charge. The accused, in such circumstances, was protected from arrest and detention.

27. At this stage, no charges have been framed against the petitioners under Section 302 of the IPC. It is not disputed that if an order is passed whereby the petitioners are charged for a graver offence, an appropriate order can be passed by the learned Trial Court in accordance with law and after considering the judgment relied upon. At that stage, undoubtedly, an order will This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 00:01:44 be passed by the learned Trial Court keeping in view the period of custody already spent by the petitioners before they were admitted on bail and also the fact that the petitioners are stated to have not misused the liberty during that period. However, in the opinion of this Court, passing of the order at this stage would be pre-mature. As stated by the learned counsel for CBI, the personal liberty of the petitioners, at this stage, is not under any threat.

28. In view of the above, considering that the parties are at ad idem that the petitioner 'Meenakshi Gupta' be heard, the impugned order is set aside and the learned Trial Court is directed to pass a fresh order on framing of charges after considering arguments advanced by all the parties.

29. It is made clear that this Court has not given any opinion on the findings given by the learned Trial Court in the impugned order and the present order is solely passed in the peculiar facts as noted above.

30. The learned Trial Court is also requested to pass an order expeditiously.

AMIT MAHAJAN, J JULY 31, 2024 This is a digitally signed order.

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