

NIA Case no. 01 of 2017

Order no. 21 dated 19.07.2017

Today is fixed for production of the accused and hearing of the bail prayer dated 12.07.2017 filed on behalf of accused Asadullah Biswas as well as the petition praying for return of the seized articles being serial nos. 1 to 4 of the seizure list dated 26.05.2017.

Accused Asadullah Biswas is produced from J.C

Ld. P.P of NIA and Ld. Advocate for the accused are present.

Ld. P.P of NIA has filed objection petition and prayed for rejection of the bail prayer of accused/petitioner. He has also filed an application praying for allowing investigation team of NIA to interrogate accused Asadullah Biswas in Alipore Correctional Home and prays for necessary direction upon the Superintendent Alipore Correctional Home.

Ld. Lawyer for accused Asadullah Biswas has submitted that while praying for copies u/s 207 of the Cr.P.C in respect of Kaliachak P.S case no. 636 of 2016 dated 22.09.2016 this court had opined that the prosecution has started denovo investigation vide order dated 03.06.2017. Under the circumstances he has prayed that as the investigation had started afresh therefore the accused Asadullah Biswas since taking over this investigation of the NIA from 11.04.2017 would be entitled to statutory bail under the provision of section 167 of the Cr.P.C as the accused is in custody since 11.04.2017 till date. He prays for statutory bail and has relied in the judgements passed in *Saraswati Rai Vs Union of India* on 4th May, 2011 by the double division bench of the Hon'ble Calcutta High Court, *Sayed Mohd. Ahmed Kazi Vs State GNCTD and Ors* reported in AIR 2012 SC 660, *Union of India Vs Nirala Yadav* reported in AIR 2014 SC 3036, *Morful Saikh @ Morful Saikh* reported in (2016) 4 C.Cr.LR (Cal) 535.

Ld. P.P on the other hand has opposed the bail prayer on the ground that this was not a denovo investigation and the investigation was being carried on u/s 173 (8) of the Cr.P.C which had been allowed by this court vide order no. 4 dated 11.04.2017. Moreover the statutory bail right of the accused accrued to him before the Ld. CJM, Malda but as the accused did not avail and chargesheet was filed in defiance of the right of the accused was extinguished after the filing of the chargesheet as per the principles percolating in *Uday Mohan Lal Acharya Vs State of Maharashtra* reported in AIR SC 1910 1925. Moreover it has been submitted that there was no statutory limit for the submission of charge sheet u/s 173(8) of the Cr.P.C. Under the circumstance the instant prayer of the accused/petitioner be rejected.

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Continued order no. 21 dated 19.07.2017

After hearing both the parties and on perusal of the materials on record it transpires that the instant court had granted prayer for investigation u/s 173(8) of the Cr.P.C vide order no. 4 dated 11.04.2017. Therefore it becomes very clear that the charge sheet against the accused/petitioner had already been submitted and therefore the question of statutory bail of the accused/petitioner did not arise. It is a fact that this court while disposing the prayer for u/s 207 of the Cr.P.C had opined that denovo investigation have been started by the prosecuting agency but that does not mean that the investigation carried on earlier in the Kaliachak P.S case would become redundant and thereby accruing a statutory period to the accused u/s 167 of the Cr.P.C. Under the circumstance the contention on behalf of the accused/petitioner does not appear to hold much water and in this respect the decisions relied upon on behalf of the accused also does not come to his rescue as the facts are completely different. As a result the instant prayer stands rejected.

As regards the return of seized articles being serial nos. 1 to 4 of the seizure list dated 26.05.2017, the prosecuting agency has submitted that the articles have been referred to the CFSL, Calcutta and the said report is yet to be received.

Under the circumstance the petition at this stage cannot be acceded to and therefore stands rejected at this stage.

As regards the prayer of the prosecuting agency to interrogate the accused Asadullah Biswas in Alipore Correctional Home is concerned is allowed.

The Superintendent Alipore Correctional Home is directed to permit the investigation team of NIA to interrogate accused Asadullah Biswas in his presence but outside his hearing.

To 02.08.2017 for production and further order.

Let a copy of this order be sent to the Superintendent Alipore Correctional Home for information and necessary action.

Let a copy of this order be sent to the NIA as prayed for.

Dictated and corrected by me

Chief Judge
City Sessions Court, Calcutta

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