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Ct. 30
Sl.4
KS

CRR 3804 of 2019

Monotosh Dey @ Mona Da @ Ziarul Gazi
-Vs.-
The State of West Bengal
(Via Video Conference)

Mr. Chanchal Kumar Dey
Mr. Megha Kundu
.....For the Petitioner
Mr. Sanjoy Bardhan
Mr. Debasish Tandon
.....For the N.I.A.

This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure is being taken on submission of the learned counsel for both the parties.

The petitioner has assailed the impugned charges arising out of N.I.A. Special Case No.2 of 2018 corresponding to charge-sheet No.14/2018 dated 17.05.2018 under Sections 120B of the Indian Penal Code, 1860 and 18 of the Unlawful Activities (Prevention) Act, 1967 as amended and 25(1A)/25(1B)(a) 29 of the Arms Act is pending in the Court of the Additional Chief Judge, City Sessions Court at Calcutta.

The prosecution case as alleged against the petitioner is that on 27.11.2017 at about 13:20 hrs on the basis of specific intelligence input received by Shri. Swapan Mondal S.I. STF Kolkata Police, headed by Shri. Aniruddha Chatterje inspector of STF reached

over Gajnabi Bridge on Cannel East Road, near Kolkata Railway Station at about 14:15 hrs and arrested two Bangladeshi Nationals namely (1) Samad Mia @ Tushar Biswas @ Tanvir @ Saiful and (2) Raizul Islam @ Suman @ Riaz @ Riazaul who came to that area for negotiating a deal related to arms and ammunitions, along with another Indian National namely Monotosh Dey @ Mona Da @ Ziarul Gazi petitioner herein, of Madaldanga Road (Lenin Nagar), 8 – Noapara, P. S. Noapara, Dist: North 24 – Parganas. Both Samad Mia @ Tushar Biswas @ Tanvir @ Saiful and Rizaul Islam @ Riza @ Suman @ Riazul who are the members of the prescribed terrorist organization “Ansarullah Bangla Team” of Bangladesh from whose possession some documents, arms, ammunitions and electronic Gazzettes were seized.

Accordingly, a complaint was lodged by Shri Swapan Mondal, S. I. STF Kolkata Police against the arrested three accused persons on the basis of which a specific case was registered being STF P.S. F.I.R. No.07/2017 dated 22.11.2017 under Section 120B/419/467/468/471 of Indian Penal Code & Section 25(1)(a) of Arms Act, and Section 14 Foreigners Act, thereafter investigation of the case was entrusted to Shri. Mrityunjay Mondal, S.I. of STF P.S. Kolkata Police Station. In the course of investigation, on the basis of the Statement of Samad Mia @ Tushar Biswas @ Tanvir @ Saiful, one accused namely Sahadat Hossain @ Babu, a Bangladeshi Nationals were arrested by STF from near Jagat Cinema Hall near Sealdah Railway Station.

Similarly, another accused namely, Umar Farooque @ Mahi @ Md. Aftab Khan @ Ali @ Mohammad Aftab Khan, son of Ainul Haque, Resident of Kachhari Kandi, P.S. Gazipur, Dakshinpara, Khordokarbar, P.O. Madhyanagar, Dist: Narsingdi, Division: Dhaka, Bangladesh was also arrested on 28.11.2017 from Panitanki Bus Stop at the crossing of Nepal Border Road, Darjeeling West Bengal for his alleged role in connection with the case under reference.

Afterwards the N.I.A. took up the investigation by re-registering the case vide FIR No.RC-11/2018/NIA/DLI dated 01.03.2018 under Section 120B/121/121A/122/123/419/467/469/471 of Indian Penal Code & sections 13, 16, 17, 18, 18A, 20, 38 & 40 of unlawful activities and sections 25(1)(a)/29 of Arms Act, and section 14 of Foreigners Act against the accused persons namely (i) Samad Mia @ Tushar Biswas @ Tanvir @ Saiful @ Tusar, (ii) Rizaul Islam (@) Riyaz @ Suman @ Riazul, (iii) Monotosh Dey @ Mona Da @ Ziarul Gazi, (iv) Sahadat Hossain @ Babu and (v) Umar Farooque @ Mqahi @ Ali @ Md. Aftab Khan (a) Mohammad Aftab Khan.

It is submitted that in course of investigation by STF, certain documents were seized from the accused persons who were reported to be the members of “Ansarulla Bangla Team” (ABT) and during the investigation conducted by the N.I.A. Pendrives, laptop were also seized from the possession of other accused persons and at the time of arrest by STF two numbers of

improvised fire arms and a numbers of ammunitions were also recovered from the accused No.3, Monotosh Dey and also seized a bottle of suspected capitals from the said accused. It has been alleged that the accused Monotosh Dey along with accused nos.2, 3 & 5 assembled at Goznavi Bridge near Kolkata Station to deal the arms which as per prosecution was the part of conspiracy to procure arms and ammunitions and dangerous chemicals for the preparation of L.F.D.(s)/Bombs etc. to wage war against the Government of India.

The grounds taken in this revisional application to assail the charge framed against the accused persons including the petitioner by the Chief Judge, City Sessions Court is that the learned Judge has failed to appreciate the copies of statements and the documents upon which the prosecution has relied, does not disclose any offence allegedly committed by the accused/petitioner warranting framing of the charge under Section 18 and 38 of Unlawful Activities (Prevention) Act, 1967.

Learned counsel for the N.I.A. submits that the two accused persons namely, Sahadat Hossain and Umar Farooque have pleaded guilty on 29.09.2020 and thus convicted on plea of guilt and sentenced for the charges framed against the accused persons.

I have heard learned counsel for both the parties, I am of the view, that there is no ground for assailing the charge having been framed by the learned Trial Judge on the basis of the charge sheet submitted against the accused petitioner and other accused

persons because it is settled principles of law that charge can very well be framed simply based on the charge-sheet being the final report of investigation into a crime.

On the contrary, learned counsel appearing for the petitioner submits that the petitioner accused stands on a different footing altogether and that charges under Section 18 and 38 of Unlawful Activities (Prevention) Act, 1967 does not lie against him.

Whether charges aforesaid are attracted against the petitioner accused or not, is the issue which can be decided in accordance with the evidence to be adduced by the prosecution in the trial because in the background of the prosecution case, there appears *prima facie* charges under Section 18 and 38 UAPA Act, 1967 against the petitioner accused too.

Learned counsel for the petitioner, contended that the petitioner accused is suffering incarceration in jail for last four years without trial being undertaken by the Learned Trial Court.

If that be so, the trial can be expedited by the Trial Court as expeditiously as possible because the accused arraigned in the case under Special Act, cannot be put behind the bar for inordinate period without trial as every person has fundamental right to life and speedy trial is recognized as right to life enshrined under Article 21 of the Constitution of India. Ergo, this Court directs the learned Trial Judge to undertake the trial of the case on the basis of

the impugned charge framed by him as expeditiously as possible preferably within a year.

Accordingly, the revisional application being CRR No. 3804 of 2019 is disposed of with the aforesaid direction.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Shivakant Prasad, J.)