

30.08.2024
Item No.1 with 2
Daily List
Ct. No.26
CHC

WPA(H) 34 of 2024

**Asma Bibi Middya (Baoa)
Vs.
State of West Bengal & ors.**

**With
CRR 1483 of 2024
IA NO: CRAN/1/2024**

**Asma Bibi Middya @ Asma Bibi (Bewa)
Vs.
Sarowar Molla & ors.**

Mr. Asim Kumar Niyogi, Advocate
Mr. Vaskar Pal, Advocate
....for the petitioner in WPA(H) 34/2024

Mr. Rana Mukherjee, Ld. A.P.P.
Mr. Simanta Kabir, Advocate
...for the State respondents
in WPA(H) 34/2024

Mr. Arindam Jana, Advocate
Mr. Sounak Bhattacharya, Advocate
Mr. Abhirup Halder, Advocate
...for the opposite party nos.1 to 5
in CRR 1483 of 2024
and for the respondent nos.6 to 11
in WPA(H) 34/2024

Ms. Jharna Biswas, Advocate
...for the petitioner in CRR 1483/24

Mr. Rana Mukherjee, Ld. A.P.P.
Mrs. Sonali Das, Advocate
Ms. Ankita Pal, Advocate
...for the State
in CRR 1483 of 2024

1. Report submitted on behalf of the State filed
in Court be taken on record.

2. Learned advocate for the State is requested to
circulate such report amongst the appearing parties.

3. Revisional Application being CRR 1483 of 2024 along with connected application are taken up for consideration subsequent to the order dated August 21, 2024.

4. Revisional application is directed against the Order No.74 dated February 16, 2023 passed in S.C-6(11)2008 by the Additional District & Sessions Judge, Fast Track 4th Court, Alipore, South 24 Parganas.

5. By the impugned order, the learned Judge discharged the private opposite parties in the revisional application from the criminal proceedings.

6. CRAN/1/2024 is an application seeking condonation of delay of 322 days in making and filing the revisional application.

7. Learned advocate appearing for the revisional applicant submits that, since the revisional applicant is a lady and approached the Legal Aid Society for assistance, time was consumed in making and filing the revisional application. She seeks condonation of delay of 322 days in making the application.

8. State and the private opposite parties are represented.

9. In his usual fairness learned advocate appearing for the private opposite parties does not oppose the application for condonation of delay.

10. In such circumstances, as also, with due respect to the learned advocate appearing for the

private opposite parties, independent of his concessions, we find that, sufficient explanation to exist in the application for condonation of delay. Consequently, we condone the delay in making and filing the revisional application.

11. CRAN/1/2024 is therefore, disposed of.

12. As noted above, the revisional application is directed against an order of discharge.

13. We perused the impugned order. The impugned order does not discuss any material available in the Case Diary to arrive at the conclusion recorded that the private opposite parties merits to be discharged from the case in terms of Section 227 of the Criminal Procedure Code.

14. Although, the impugned order, records that, the jurisdictional Court perused the materials in the Case Diary, he, however, did not record any reasons for the conclusion that he arrived at of discharging the private opposite parties.

15. That apart, in the final direction in the impugned order, learned Jurisdictional Court was pleased to acquit private opposite parties.

16. When, the Jurisdictional Court is discharging the accused on the ground of lack of materials in the Case Diary, he loses the jurisdiction to acquit such accused.

17. Learned advocate appearing for the State submits that, further investigations are in progress and that, State collected further materials for the purpose of filing of supplementary charge-sheet. He seeks leave with regard thereto.

18. Learned advocate appearing for the private opposite parties submits that, an exercise under Section 207 of the Criminal Procedure Code was undertaken. Therefore, the Jurisdictional Court should limit itself to materials available in the Case Diary as on the date of passing of the impugned order dated February 16, 2023.

19. We respect, we are unable to accept such contention of the private opposite parties.

20. Subsequent investigation may bring forth further materials which requires the consideration of the Jurisdictional Court on the issues both on Section 227 of the Criminal Procedure Code for the purpose of discharge as also for the purpose of framing of charges.

21. Therefore, we deem it appropriate to set aside the impugned Order No.74 dated February 16, 2023. The issues may be decided by the Jurisdictional Court, in accordance with law.

22. CRR 1483 of 2024 is disposed of.

23. So far as the Habeas Corpus Writ Petition is concerned, Court is informed that, further

investigations are in progress. Victim is yet to be recovered.

24. No doubt, State will continue with their efforts to recover the victim.

25. List the writ petition on **September 18, 2024** when Sate will submit a further report.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)