

17/03/2021
Item No.1 (t)
Court No.1.
AB/S DE

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Through Video Conference
W.P.A. (P) 27 of 2021

The Court on its own Motion :

**In re : UTP Dipak Joshi @ Jaisi @ Jaishi, S/o
Champakha Jaisi, lodged in Dum Dum Central
Correctional Home**

Mr. Saikat Banerjee,
Mr. Uttam Kr. Ray,
Mr. V. Tripathy ...for the High Court Admn.

Mr. Jayanta Narayan Chatterjee,
Ms. Jayasri Patra,
Mr. Nazir Ahamed ...for the SLSA.

Mr. Malay Bhattacharya,
Mr. Subhrojyoti Ghosh ...for the Relative of
UTP, Dipak Joshi.

Mr. Pradip Mondal,
Mr. Hirak Sinha for the Consulate General of Nepal.

Mr. Kishore Dutta, Ld. AG,
Mr. Debasish Ghosh ...for the State.

The learned 1st Additional District & Sessions Judge,
Darjeeling where Sessions Case No.31 of 1981 is pending,
will trace out the records and send it to this Court through
a special messenger within a period of two days without
fail.

List this matter for further consideration on
18.3.2021 at the top.

Registrar General is directed to communicate this
order forthwith telephonically and by email or other mode
to the Court below.

[Thottathil B. Radhakrishnan, C.J.]

[Aniruddha Roy, J.]

Later,

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1. This matter relates to an Under Trial Prisoner who, going by the report of the West Bengal State Legal Services Authority; for short, “SLSA” and the Directorate of Correctional Services; for short, “DCS”, is in the Dum Dum Central Correctional Home for nearly 41 years by now.

2. The Department of Psychology, University Colleges of Science, Technology and Agriculture, Calcutta University through Dr. Manisha Dasgupta, Associate Professor and Dr. Somdeb Mitra, assessed the said under trial prisoner; for short, “UTP”, namely, Dipak Joshi @ Jaisi @ Jaishi and has stated that his IQ level indicates that his current mental age in terms of intellectual functioning is around 9 years and 9 months. That is the report given by that University Department on 11.01.2021 upon the presentation of Dipak Joshi @ Jaisi @ Jaishi before them with the intervention of SLSA.

3. From the material papers, we find that the UTP is to stand trial for an offence punishable under Section 302 of IPC.

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4. Following the efforts taken by the SLSA and the Officers under its command and through different other supporting Institutions, the Consulate General of Nepal has placed on record, the fact that the whereabouts of the near relatives of the UTP have been traced out and his mother is 90 years of age. It is also submitted on behalf of the Consulate General of Nepal in India at Kolkata that the Consulate is requested to do the needful to support the affairs of the UTP.

5. An affidavit has been placed on record by Prakash Chandra Sharma Timsina. He states that he is the elder son of the UTP's uncle. UTP and Prakash Chandra Sharma Timsina are stated to be the grandchildren of late Premlal Timsina. Therefore, Prakash Chandra Sharma Timsina is a near relative of the UTP.

6. On the basis of the materials on record, we see that after the assessment of the UTP's mental status, sometime in January, 1982, when he was found to be not mentally fit to stand trial, there is no contrary report at any point of time even as of now before the Court of Session where the case is pending for trial.

7. In the aforesaid view of the matter, we do not see that any useful purpose will subserve the ends of

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justice by continuing to detain UTP Dipak Joshi @ Jaisi @ Jaishi in the Correctional Home. We are, therefore, of the view that in exercise of authority under Section 482 of Cr.P.C. and Articles 226 and 227 of the Constitution of India; and, also applying the substance of the directions given by the Hon'ble Supreme Court of India in ***News Item "38 years in jail without trial" published in Hindustan Times, In Re Vs. Union of India, reported in (2007) 15 SCC 18***, the UTP Dipak Joshi @ Jaisi @ Jaishi, S/o Champakha Jaisi could be entrusted to the custody of his near relative, Prakash Chandra Sharma Timsina who has filed an affidavit and application seeking release of UTP Dipak Joshi @ Jaisi @ Jaishi, S/o Champakha Jaisi. This course will also be in consonance with the power of the Court to grant bail pending trial.

8. For the aforesaid reasons, it is ordered that the UTP namely Dipak Joshi @ Jaisi @ Jaishi, S/o Champakha Jaisi, now housed in Dum Dum Correctional Home in connection with Sessions Case No.31 of 1981 in the First Additional District & Sessions Judges, Darjeeling is released from the Correctional Home and entrusted to the custody of Prakash Chandra Sharma Timsina. It is impossible and impermissible to direct the UTP to execute any

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bond in view of the deficit in his mental capacity. Ends of justice will be satisfied if his release is supported by a simple bond executed by the aforementioned, Prakash Chandra Sharma Timsina in favour of the Registrar General of this Court undertaking to produce the UTP as and when directed by this Court. That bond should be attested by Mr. Satish Thapa, Office Secretary of Consulate General of Nepal in India at Kolkata. Upon such bond being executed to the satisfaction of the Registrar General at the earliest, preferably today or tomorrow, the Dum Dum Central Correction Home shall release the said person into the custody of Prakash Chandra Sharma Timsina who will execute requisite receipt to the Dum Dum Central Correctional Home upon taking charge of the said UTP. Prakash Chandra Sharma Timsina will thereupon keep the Consulate General of Nepal in India at Kolkata updated once in six months, until otherwise ordered, with requisite inputs as may be required at that end regarding the affairs of UTP. Upon his release, we direct that all Statutory Authorities will ensure and do the needful to facilitate the transit of UTP Dipak Joshi @ Jaisi @ Jaishi to Nepal under the aegis of the Consulate General of Nepal in India at Kolkata.

9. It is so ordered

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[Thottathil B. Radhakrishnan, C.J.]

[Aniruddha Roy, J.]