

10/03/2021
Item No.121(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, lodged in Dum Dum
Central Correctional Home**

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

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

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.

We have heard the parties on the basis of an affidavit placed on record today by the Consulate General of Nepal. The said affidavit sworn to on 8.3.2021 is taken on record.

We have assessed the factual situation of the case. It reflects that the person of Nepali origin was arrested about 41 years ago and since then, he is under detention, may be on the basis of orders of remand ; also awaiting reports of the appropriate authority as regards his mental status because issues

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appear to have arisen as to whether the said person is fit to stand trial on a charge for having committed an offence.

In the larger spectrum, what surges, is that the person, who was arrested on 12.05.1980 going by the material papers, has already undergone a period of more than 40 years in custody even if life imprisonment is to be ultimately handed down after a trial which could happen only if the accused is found to be one, who can stand trial in spite of his mental capacity which is writ large in the materials before us.

The report of SLSA and the materials provided by the High Court Administration as also the material papers available with the Consulate General of Nepal tend to indicate that this is a case where the person in custody has the mindset of a child not more than 9-10 years of age.

While the Consulate General of Nepal is benevolent to extend its limb of support and solace to the said person by paving way by releasing him on bail to be handed over to his near relative, who has also filed an affidavit. We, on a deeper consideration, are of the view that it needs to be examined whether it is necessary to continue the prosecution at all against him to secure the ends of justice or it is necessary in the interest of justice and to secure the ends of justice that the said prosecution itself be terminated through

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a judicial order of the superior Court in exercise of power under Section 482 of the Code of Criminal Procedure read with Articles 226 and 227 of the Constitution of India, by this Court in this suo motu proceeding.

We have requested the learned Advocate appearing for the SLSA, High Court Administration, Consulate General of Nepal and also for the relative of the person concerned to acclimatize themselves with the appropriate legal aspects in this regard and make further submissions when this matter would appear on 15.3.2021 at 2 p.m. as a “Specially Fixed Matter”.

(Thottathil B. Radhakrishnan, C.J.)

(Aniruddha Roy, J.)