

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

Crl. Petn.No.18 of 2023

Sri Debabrata Dey @ Debu

.....Petitioner

_V_E_R_S_U_S_

The State of Tripura

.....Respondent

For Petitioner(s)	:	Mr. M. Mukharjee, Sr. Advocate. Mr. S. Lodh, Advocate. Mr. B. Manna, Advocate. Mr. D. Bakshi, Advocate.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Legal Report	:	YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_O_R_D_E_R_

14/09/2023

Heard Mr. M. Mukharjee, learned senior counsel assisted by Mr. S. Lodh, Mr. B. Manna and Mr. D. Bakshi, learned counsel appearing for the petitioner. Also heard Mr. S. Debnath, learned Additional Public Prosecutor, appearing for the respondent-State.

[2] The present petition has been filed under Section-482 of the Cr. P.C., for invoking the inherent powers of this Court, to prevent the abuse of the due process of law, and for quashing/setting aside the impugned Order dated 10.07.2023, passed by the Ld. Special Judge, Khowai Tripura District, Khowai, (Smt. S. Das), in case No. Mungiakami P.S. Case No. 15 of 2021 whereby and whereunder, the learned Special Judge issued an order of Proclamation against the petitioner and also set aside notice of Proclamation dated 01.08.2023, issued against the petitioner.

[3] The facts in brief are that, on the basis of a written complaint, a case had been registered against the petitioner vide Mungiakami P.S. Case No. 15 of 2021, dated 30.05.2021 under Sections-21(C)/29/25 of the NDPS Act. Thereafter, investigation was carried on in course of investigation the I.O. submitted part charge sheet which was not accepted by the learned court. Apprehending arrest, the petitioner filed bail application being B.A. 19 of 2023, but the same was withdrawn. On 10.07.2023 the date was fixed for submitting investigating report in final form, but the investigating authority did not submit the same and filed a petition praying for issuance of proclamation and attachment against the petitioner.

[4] Prior to this, as per prayer of the investigating authority, non-bailable warrant was issued, but without execution of the non- bailable warrant, learned Court below issued the proclamation order by impugned Order dated 10.07.2023. After issuance of the Order of Proclamation, learned Court below issued the notice on 01.08.2023, directing the petitioner to appear before the learned Court on 25.08.2023, i.e., one month's time has not been given. Challenging the impugned Order dated 10.07.2023 and the notice dated 01.08.2023, the instant petition has been filed.

[5] Mr. Mukharjee, learned senior counsel assisted by Mr. S. Lodh and Mr. B. Manna, learned counsel appearing for the petitioner has submitted that For that, the impugned order dated 10.07.2023 is bad in law as there is no subjective satisfaction of the learned Special Judge to the effect that the petitioner absconded or is concealing himself so that such warrant cannot be executed upon him. It has been further submitted that for issuing a proclamation order under Section-82 Cr.P.C., the learned court ought to have come to a conclusion that the warrant could not be executed as the accused person was absconding or is concealing himself so that such warrant could not be executed, but in the impugned order there is no such satisfaction of the learned Court below, and hence, the impugned order is liable to be interfered with.

[6] The investigating authority at the time of filing the petition for proclamation did not submit any evidence whereby they could prove that the petitioner has absconded or is concealing himself so that the warrant cannot be executed. It is trite law the section of the learned court, the prosecution the place evidence by which the court can come to come that the accused person has absconded is concealing himself so that such warrant cannot be executed, but in the case, the prosecution could not lend any evidence no produce any documents where the learned court can come to a conclusion that the accused person is absconding or concealing himself so that such warrant cannot be executed. As the prosecuting agency failed to comply the mandate of Section-82 CPC and the learned court below without appreciating the same passed the impugned order dated 10.07.2023 for issuance of proclamation, the impugned order is liable to be interfered with.

[7] The notice of proclamation dated 01.08.2023 is bad in law as the proclamation notice was issued on 01.08.2023 directing the petitioner to appear before the learned Court below on 25.08.2023 i.e. the learned court below did not give one month's time to the petitioner for his appearance. As per mandate of Section-82 Cr.P.C., the learned Court below ought to have given one month's time from the date of publication of the notice for appearance. In the instant case, since the learned Court below did not follow the mandate of Section-82 Cr.P.C., the impugned notice of proclamation dated 01.08.2023 is also bad in law and liable to be set-aside.

[8] The impugned order dated 10.07.2023 for issuance of proclamation is bad as without verifying the execution report Warrant of Arrest Id. Court below passed the order of proclamation. In the instant case from the orders dated 21.12.2022, 04.01.2023, 17.01.2023, 31.01.2023, 14.02.2023, 15.02.2023, 01.03.2023, 20.03.2023, 31.03.2023 (Annexure-7 to 15), it is revealed that warrant was not executed, and hence, issuance of proclamation order is bad and liable to be dismissed.

[9] Mr. S. Debnath, learned Addl. P.P. appearing for the respondent-State has submitted that the accused petitioner Debabrata dey @ Debu is a habitual offender. He was previously arrested in connection with Panisagar P.S. Case No2018/PNS/022 dated 20.05.2018 under Section-20(ii) of NDPS Act. He was charge sheeted in this case vide PNS P.S. C/s No 37/2019. The accused petitioner has amassed huge movable and immovable property including flat at Baguihati, North 24 parganas, West Bengal, two 10 wheeler lorry, two 4 (four) wheeler vehicle etc from the illegal trade of drugs like Phensendyl, Eskuf etc.

[10] The accused petitioner is running a network of illegal drugs trading since long and he is the leader of his network. He has no any drug licence. Several raids were conducted since registration of the case to arrest accused petitioner Debabrata Dey @ Debu but he was found absconding. During investigation from the statements of witness and interrogation statements of arrested accused persons namely Manik Sarkar and Partha Dey it is established that owner of the seized contraband articles is accused petitioner and two others. FSL report confirmed that seized articles are codeine based cough syrup.

[11] During investigation several notices under Section-67 of NDPS Act 1985 were issued to Debabrata Dey on 14.02.2022, 10.03.2022 and 29.06.2022 but, he did not respond till date. On 24.09.2021 and 10.03.2022 visited the residential flat named Grihangan Apartment situated at Baguiati, Kolkata but he is also found absconding with lock and key. Finding no other alternative a petition was filed before the learned Court of Special Judge, Khowai on 13.09.2022 to issue NBWA against absconding accused petitioner Debabrata Dey @ Debu. The learned Court of Special Judge Khowai was pleased to issue NBWA against accused petitioner Debabrata Dey @ Debu on 14.09.2022.

[12] Several raids also were conducted to execute the NBWA but Debabrata Dey @ Debu is hiding himself to escape police arrest. This refers A .D. Nagar P.S. G.D. Entry No 34 dated 02.01.2023, GDE No 20 dated 07.01.2023, GDE No 27 dated 26.02.2023, GDE No 23 dated 07.03.2023, GDE No 36 dated 31.03.2023, GDE No 33 dated 24.04.2023.

[13] Based on an information search and raid was conducted at Titagarh on 23.07 2023 with the assistance of Khardha P.S, North 24 Parganas, West Bengal as the accused petitioner concealed himself at north 24 Parganas. But he was not found there. The presence of the accused petitioner is very much required in the instant case since he is the mastermind of this crime, a petition has been filed before the learned Court of Special Judge, Khowai to issue 'Proclamation and Attachment' order against absconding accused persons namely Debabrata Dey @ Debu and Apu Ranjan Das with intention to attach his property. Another petition was filed before the learned Court of Special Judge, Khiwai to issue Proclamation against accused petitioner on 01.06.2023.

[14] On 01.08.2023 the learned Court of Special Judge, Khowai was pleased issued proclamation against accused person Shri Debabrata Dey @ Debu for his appearance on 25.08.2023. Proclamation was duly executed on 02.08. 2023 one copy of proclamation has been affixed beside front door of house building of accused petitioner Debabrata Dey @ Debu at Bordowali near BOC and Yubak Sangha club, one copy of Proclamation has been affixed in the notice board of the office of Agartala Municipality Corporation Ward No. 33, Bordowali and one copy of Proclamation has been affixed on the front side wall Yubak sangha Club building, Bordowali. One copy of Proclamation has been published on the local

dailies including Dainik Sambad on 18.08.2023. But, till date accused petitioner is absconding. He did not appear before the learned Court of Special Judge, Khowai though proclamation was executed.

[15] In view of overall discussions, this Court is of the considered opinion that a citizen cannot claim/plead equities, where he himself is not following the due process of law. As a law abiding citizen, the accused petitioner first ought to have appeared before the Court of law once summons are issued at first stage and at the second stage when warrants are issued, he ought to follow the procedure as contemplated under Cr. P.C. When Section-82 proclamation is issued in Form-4, he ought to have complied with the Court's directions. Instead evasion of legal procedure and challenging the proclamation order stating that Court has not followed the procedure, this conduct of the petitioner showing disrespect towards Court of law and also to legal procedure, which this Court is not inclined to appreciate and has no hesitation to draw an adverse inference against the petitioner. The word 'abscond' means *the primary meaning of the word 'abscond' is to hide and when in order to evade the process of law a person is hiding from (or even in) his place of residence, he is said to 'abscond'*.

[16] It becomes an obligation on the part of a law abiding citizen to respect and obey the law of the land and the Court proceedings. Generally, always the arguments are advanced in writ petitions and in criminal cases saying the respondent has violated the doctrine of *audi alteram partem* and not followed the procedure contemplated under law and pray for indulgence. But it becomes equally necessary to examine as to what accusation the citizen is facing and was he approached the Court of law with clean hands. In the backdrop of the allegations against a citizen, it would be better to decide whether he is entitled to raise such argument. Citizens are also equally responsible to comply the requirements under the law. Law is not one sided as if only respondents should follow. Even the citizen/petitioner should first make out a *prima facie* case in his favour.

[17] Antecedents of accused are equally important and needs to be considered while dealing with such type of matter. This Court goes to an extent of saying that the accused-petitioner taking advantage of one technical error he cannot go away with clean chit. Section-82 of Cr. P.C. proclamation warrants issued but, he is absconding, nothing prevented him to obey the Court orders. He

has not approached with clean hands. He shall appear before the concerned learned Court having jurisdiction on or before 22.09.2023 failing which; the learned Court may proceed under Section-83 of the Cr. P.C which deals with attachment of property of person absconding.

[18] Accordingly, the present petition stands dismissed. Return the case diary.



JUDGE

A. Ghosh

**ANJAN
GHOSH**

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ANJAN GHOSH
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