

**Court No. - 28**

**Case :-** APPLICATION U/S 482 No. - 10605 of 2023

**Applicant :-** Rajesh Pandey @ Rajesh Ram Lal Pandey And Another

**Opposite Party :-** State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home Lko. And 3 Others

**Counsel for Applicant :-** Mahendra Bahadur Singh, Rajesh Kumar, Rohit Kumar Tripathi, Vikas Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Shree Prakash Singh, J.**

Supplementary affidavit filed today by the counsel for the applicant is taken on record.

Heard Sri M.B. Singh assisted by Sri Rajesh Kumar, learned counsel for the applicant, Sri Nirmal Kumar Pandey, learned AGA for the State and perused the material placed on record.

The instant application has been filed with a prayer to quash and set-aside the order dated 5.10.2023 passed by Learned Additional Chief Judicial Magistrate-I, Court no.25, Lucknow in case No. 16204/2022 arising out of case crime no. 227/2020 under sections 406/420/386/120-B IPC, Police Station Gudamba, District Lucknow. It is further prayed to stay the operation, implementation and enforcement of order dated 5.10.2023 passed by passed by Learned Additional Chief Judicial Magistrate-I, Court no.25, Lucknow in case No. 16204/2022 arising out of case crime no. 227/2020 under sections 406/420/386/120-B IPC, Police Station Gudamba, District Lucknow.

The learned counsel appearing for the applicants submits that the applicants are innocent and have falsely been implicated in the instant matter. He next added that the applicant never avoided to appear before the trial Court, whereas, the fact remains that without serving summons and issuing the non-bailable warrants to the applicants, the proclamation under Section 82 of CrPC has been issued and further so far as the applicant no. 1 is concerned, he has drawn attention towards the three entries in G.D., which shows that the address has been mentioned for Maharashtra though the police team went to Delhi. He next added that in fact the mandatory period of 30 days has also not been followed by the learned trial Court as is evident that the non-bailable warrant was issued on 5.10.2023

and that is said to have been published by allegedly pasting it on 31.10.2023. He further submits that the mandate of Section 82 of CrPC has also been violated by the trial Court as the order dated 5.10.2023 by which the proclamation under Section 82 of CrPC was issued, is evident that the reason to believe has not been recorded by the trial Court, which is one of the condition precedent of the mandate of Section 82 of CrPC. He added that the order of non-bailable warrant was never in the knowledge of the applicants and therefore, they cannot be treated as absconders.

In support of his contentions, he has placed reliance on the judgement rendered in **1969 Cri. L.J. 826; Gurappa Gugal and others Vs. State of Mysore** and has referred paragraph 3 and 4 of the aforesaid judgement.

Paragraph 3 and 4 of the aforesaid judgement are quoted hereinunder:-

*"3. Mr. Hegde the learned Counsel for the petitioners submitted that the provision of Section 87 of the Code of Criminal Procedure is mandatory and a proclamation under that Section ought to have been issued specifying not less than thirty days from the date of publishing of the proclamation for the appearance of the petitioners before the Court. But the Magistrate has given thirty days time from the date of the proclamation which is evidently in contravention of the provision contained in Section 37 of the Code of Criminal Procedure.*

*4. I find substance in the contention. At copy of the proclamation is filed. The relevant portion of the same reads as follows:*

*Proclamation is hereby made that the said...is required to appear before this Court to answer the complaint within 30 days 'from this date.' (Underlining here in single quotation marks-Ed) is mine).*

*It is thus clear that the thirty days time allowed by the Court was from the date of the proclamation and not from the date of its publication as envisaged by Section 87 of the Code of Criminal Procedure. It was obligatory that an absconding person should be given thirty days time from the date of publication of the proclamation for his appearance before the Court. Therefore the error committed by the Magistrate cannot be construed to be a mere irregularity which can be cured under Section 587 of the Code of Criminal Procedure."*

He has further placed reliance on the judgement rendered in **Devendra Singh Negi Vs. State of U.P. passed in Criminal Misc. Application No. 12627 of 1992** and has referred paragraph 14 of the judgement, which is reproduced hereinunder:-

*"14. The words, "has absconded or is concealing himself so that such warrant cannot be executed" in Section 82 of the Code are significant. Every person who is not immediately available cannot be characterised as an absconder. The Court has to record its satisfaction that the accused has absconded or is concealing in order to avoid execution of the warrant. The provisions of Section 82 are mandatory and are to be construed strictly. Section 82 requires that the court must, in the first instance, issue a warrant and it must put down its reasons for believing that the accused is absconding or concealing himself. My view expressed above is supported by a Division Bench case of Dip Narain Singh v. State of Bihar, 1981 Cri LJ 1672 (Patna). Thus, in every case where the warrant is not executed, resort cannot be had to Section 82 and it may be necessary to examine the officer concerned who had gone to execute the warrant and to the measures adopted by him to serve the same. (See Kunwar Singh v. State, 1982 A Cr R29)."*

Referring the aforesaid judgements he submits that the case of the present applicants is squarely covered with the ratio of the aforesaid judgements. Therefore, submission is that the order of non-bailable warrants as well as the proclamation issued under Section 82 of CrPC may be set-aside.

On the other hand, the learned counsel for the State has vehemently opposed the contentions aforesaid and submits that the Police has rightly proceeded in the matter after the non-bailable warrant has been issued by the trial Court, which is evident from the GD entries itself. He added that it is not a case of the applicants that the GD entries do not mention the address of the applicants, though the Police has also raided the anticipated place at Delhi as well. He next added that after issuance of the non-bailable warrant, the trial Court has proceeded while issuing proclamation under Section 82 CrPC and thus, there is no erroneousness in the order of proclamation as well as the non-bailable warrant issued by the trial Court, thus, no interference is warranted.

Considering the submissions of the learned counsel for the parties and after perusal of the material placed on record, it transpires that the applicants have challenged the order of non-bailable warrant as well as the proclamation issued under Section 82 of CrPC. When this Court examines the orders of

non-bailable warrant as well as the proclamation under Section 82 of CrPC, it reveals that non-bailable warrant was issued against the applicant no. 1 on 5.10.2023 and thereafter as per the admitted position, the same was pasted at public place as per the provisions prescribed under Section 82 of CrPC, on 31.10.2023, though, the same is within 30 days which goes against the mandate of provision of Section 82 of CrPC. Further, this Court has also noticed the fact that no NBW has ever been issued against the applicant no. 2 as per the contention and pleadings mentioned in the application. Further, it is also evident that the order of proclamation does not find any reason as to how the trial Court has believed that the applicants are absconders.

The learned counsel appearing for the applicants submits that the applicants undertake that they are ready to cooperate with the trial Court proceedings and they will remain present before the trial court on each and every date.

In view of the aforesaid submissions and discussions, the impugned orders of non-bailable warrant as well as the proclamation under Section 82 of CrPC are hereby set-aside.

The applicants are directed to remain present on each and every date fixed before the trial Court, unless any unavoidable circumstances are there.

In case of any further non-cooperation in the trial proceedings, the trial Court is at liberty to take further course of action, as is prescribed in the Criminal Procedure Code.

With the aforesaid observations instant application is hereby **allowed**.

**Order Date :- 2.11.2023**

Anurag