



2024:UHC:8947

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No.678 of 2024

3 December, 2024

Awani Kumar Sinha

--Applicant

Versus

State of Uttarakhand & Anr.

--Respondents

Present:-

Mr. Pawan Mishra, Advocate for the applicant

Mr. Deepak Bisht, Deputy A.G. for the State

Hon'ble Vivek Bharti Sharma, J. (Oral)

By means of present petition, petitioner seeks quashing of order dated 01.06.2024 (*Annexure-5*) passed by the Judicial Magistrate, Ist, Dehradun and the entire proceedings of Misc. Criminal Case No.1553 of 2024 "*Manoj Kumar Thakur vs. State of Uttarakhand*" under Sections 384, 385, 389 and 120-B of IPC and Section 67 of Information Technology Act, pending in the court of Judicial Magistrate, Ist, Dehradun.

2. Heard.

3. Learned counsel for the petitioner/accused would submit that vide impugned order dated 01.06.2024 passed by Ist Judicial Magistrate, Dehradun, non-bailable warrants have been issued against the petitioner/accused.



4. He would further submit that on completion of investigation, charge-sheet dated 16.01.2014 was filed by the I.O.; that, the petitioner was not named as an accused in the charge-sheet; that, the charge-sheet neither say that the investigation is still going on against the applicant, nor the investigation officer said that further investigation will commence after arrest of applicant. He would submit that as the investigation had been completed, there was no occasion for the Investigating Officer to seek issuance of non-bailable warrants against the petitioner/accused and to file application u/s 82 & 83 of Cr.P.C. *(the Criminal Procedure Code as then was)*.

5. Per contra, learned State Counsel would submit that the charge-sheet filed in the case specifically states that the arrest of the petitioner/accused is yet to be made and that implies that further investigation would continue as against the petitioner/accused.

6. Learned counsel for the State would further submit that when the petitioner/accused did not appear before the trial court despite issuance of summons only then the Investigating Officer filed the application for issuance of processes u/s 82 & 83 of Cr.P.C.

Besides, he would submit that even otherwise present petition filed by the Attorney of the



petitioner/accused is not maintainable as the facts deposed in the affidavit by the Attorney are not in his exclusive knowledge.

7. In reply to this submission, learned counsel for the petitioner would submit that the petition is filed by the Attorney on the information given by the petitioner/accused.

He would further submit that previously the petitioner had been arrested by the I.O.; but vide order dated 06.10.2017 (*Annexure-4*) IInd Judicial Magistrate, Dehradun, refused the remand of the petitioner/accused on the ground that there was an order of stay on the operation of the processes u/s 82 of Cr.P.C. and the non-bailable warrants by the Sessions Court in Criminal Revision No.91 of 2015 filed by the petitioner; that, therefore, there was no occasion for the Court to issue non-bailable warrants against the petitioner/accused.

8. Learned State Counsel would rebut these submissions on the ground that the petitioner/accused had filed the Criminal Revision No.91 of 2015 against the order of issuance of non-bailable warrants and the same was dismissed by the Vth Additional Sessions Judge, vide judgment dated 08.05.2019.

He would further submit that the earlier bail granted to the petitioner/accused on 06.10.2017 was not on the ground that there was no offence



against him but it was granted for the reason that when he was arrested there was a stay granted by the revisional court on the operation of the non-bailable warrant and the processes u/s 82 & 83 of Cr.P.C.

9. Learned State Counsel would further submit that thereafter the investigation was done and there was sufficient evidence found against the petitioner/accused whereafter the processes and summons were issued against him and the proceedings were initiated u/s 82 of Cr.P.C., as apparent from the petition itself, and consequent upon these proceedings, the non-bailable warrants were issued against the petitioner.

He would further submit that the present petition is not of a kind which requires invocation of the extraordinary jurisdiction of this court u/s 528 of B.N.S.S.; that, the petitioner/accused has an equally efficacious remedy available before the trial court against the order of non-bailable warrant or to apply for cancellation of non-bailable warrants and/or regular bail, as the case may.

He would further submit that the impugned order was passed on 01.06.2024 whereas the present petition was filed on 14.10.2024 i.e. after four months, which clearly show that the petitioner/accused is taking the legal process for a ride.

10. Heard the submissions of learned counsel



for respective parties and perused the material available on file.

11. Considered and perused the record.

12. It is trite that the powers under Section 528 of B.N.S.S. have to be exercised sparingly, carefully and with caution and only to prevent abuse of process of any Court or otherwise to secure ends of justice.

In view of submissions made hereinabove, the Court is of the view that this is not a fit case where the powers u/s 528 of B.N.S.S. should be exercised.

13. At this stage, learned counsel for the petitioner would pray that the case is very old and there is no likelihood of petitioner/accused to abscond, therefore, some protection against the execution of non-bailable warrant be given to him till he makes an application for cancellation of non-bailable warrant or regular bail.

14. In view of the reasons recorded above, present petition lacks merits. Same is hereby dismissed *in limine*. However, liberty is given to the petitioner/accused to approach the concerned Trial Court within seven days by making an application for cancellation of N.B.W. and/or regular bail. If any such application is moved by the petitioner/accused



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within seven days, the operation of the N.B.W. shall remain in abeyance till decision on such application.

(Vivek Bharti Sharma, J.)
03.12.2024

Rajni

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GUSAIN

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