



2025:UHC:11355

Reserved on:17.11.2025

Delivered on:18.12.2025

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (Criminal) No.63 of 2024

Anoop Agrawal and Another Petitioners

Vs.

State of Uttarakhand and Ors. Respondents

Presence:

Mr. Aditya Singh, learned counsel for the Petitioners.

Mr. Vipul Painuly, learned AGA, for state.

Mr. Bhuwan Bhatt, learned counsel for Respondent No.3.

Hon'ble Ashish Naithani, J.

1. The present writ petition arises out of FIR No. 551 of 2023 registered at Police Station Kashipur for offences under Sections 147, 148, 149, 307, 323, 384, 504 and 506 IPC. The Petitioners challenge two orders passed by the learned Chief Judicial Magistrate, namely, the order dated 17.11.2023 issuing a proclamation under Section 82 of the Code of Criminal Procedure and the subsequent order dated 03.01.2024 initiating attachment under Section 83 of the Code.

2. As per the FIR lodged by Respondent No. 3, the Petitioners had allegedly threatened him for money and, on 22.10.2023, arrived at Ramleela Maidan along with several persons armed with weapons, assaulted him and fired a gunshot which narrowly missed. Respondent No. 3 claims to have suffered injuries but states that he did not lodge a complaint immediately.



3. The Petitioners deny the allegations and assert that they have been falsely implicated due to political enmity. They rely on an RTI reply from the local police, asserting that on 22.10.2023, no incident was recorded in the General Diary at the said venue, and that police personnel were deployed there for routine duty.

4. After registration of the FIR, the Petitioners filed an interim anticipatory bail application before the learned Additional Sessions Judge, which came to be rejected on 03.11.2023. Prior thereto, on 31.10.2023, the learned Chief Judicial Magistrate had issued a Non-Bailable Warrant against them. The Petitioners contend that the pendency of their anticipatory bail application was not brought to the notice of the Magistrate.

5. The Petitioners thereafter approached this Court by filing an anticipatory bail Application No. 1030 of 2023. While the application was pending, the Investigating Officer moved an application seeking a proclamation under Section 82 of the Code, which was allowed by the learned Chief Judicial Magistrate on 17.11.2023.

6. The Petitioners filed an application dated 14.12.2023 before the learned Chief Judicial Magistrate seeking recall of the Non-Bailable Warrant and the proclamation, placing reliance on the RTI reply and asserting that they had not absconded. As per the record, the learned Magistrate adjourned the matter for a status report but did not decide the recall application.

7. On 03.01.2024, the learned Chief Judicial Magistrate proceeded to pass the order initiating attachment proceedings under Section 83 of the Code. The Petitioners contend that this was done without considering their recall application and without recording satisfaction that they were evading arrest.



8. It also appears from the record that earlier Writ Petition No. 1666 of 2023, filed by the Petitioners in respect of the same FIR seeking quashing and protection, had been dismissed on 21.12.2023 on the ground that the Petitioners had not disclosed their criminal history. The present writ petition is a subsequent proceeding concerning the process issued during the investigation of the same FIR.

9. Learned counsel for the Petitioner submits that the Investigating Officer suppressed relevant facts, including the pendency of anticipatory bail proceedings and the RTI material, while seeking proclamation. It is urged that the Petitioners were pursuing legal remedies and could not be treated as absconding.

10. It is submitted that the order dated 17.11.2023, issuing a proclamation, was passed mechanically and without recording satisfaction that the conditions of Section 82 were fulfilled. Learned counsel contends that the Petitioners had appeared before courts and were represented by counsel, and therefore, there was no justification to treat them as evading arrest.

11. With respect to the order dated 03.01.2024 under Section 83 of the Code, learned counsel for the Petitioner urged that the learned Chief Judicial Magistrate acted prematurely. The recall application filed on 14.12.2023 remained pending, and without adjudicating the same, the learned Magistrate proceeded to initiate attachment. It is contended that the learned Magistrate did not record the mandatory satisfaction under Section 83 of the Code, and therefore the order is liable to be set aside.

12. Learned counsel for Petitioner submits that the FIR itself is doubtful and that the allegations are politically motivated. The Petitioners rely on the RTI reply, the absence of immediate police reporting by the complainant and the alleged inconsistencies in the FIR. They therefore



seek quashing of the orders under Sections 82 and 83 of the Code and request protection from arrest.

13. Learned AGA for State submits that the allegations in the FIR are serious and disclose commission of cognizable offences. It is contended that the Petitioners did not cooperate with the investigation and failed to appear before the Investigating Officer, necessitating the issuance of warrants and subsequent steps.

14. Learned AGA submits that the present writ petition is not maintainable. It is the second petition relating to the same FIR, whereas the earlier writ petition had been dismissed for suppression of criminal history. It is argued that the Petitioners cannot re-agitate issues that arise from the same factual background.

15. Learned AGA asserts that disputed factual issues raised by the Petitioners, including the RTI material and allegations of false implication, cannot be examined in writ jurisdiction. It is submitted that no jurisdictional error is apparent in the orders passed by the learned Chief Judicial Magistrate.

16. Learned counsel for Respondent No. 3 maintains that the FIR contains specific allegations and that the Petitioners were avoiding the investigation. It is submitted that the Petitioners' conduct reflects an attempt to delay and frustrate the criminal process.

17. It is contended that the writ petition is an abuse of the remedy under Article 226 and that the Petitioners have adequate remedies before the trial court, including the remedy of recall. Issues relating to RTI replies, political rivalry or absence of injury records are all matters of defence to be examined during pre-trial or trial.

18. Having heard learned counsel for the parties and perused the material placed on record, this Court is of the considered view that no



ground is made out for the exercise of extraordinary jurisdiction under Article 226 of the Constitution in the present matter. The petition, in substance, seeks interference with steps taken by the learned Chief Judicial Magistrate during the course of investigation, namely, issuance of a proclamation under Section 82 of the Code and initiation of attachment proceedings under Section 83 of the Code. Interference with such interlocutory orders is permissible only where a clear jurisdictional error or a violation of mandatory statutory requirements is demonstrated.

19. At the outset, it is relevant to note that the Petitioners had earlier approached this Court by filing Writ Petition No. 1666 of 2023 relating to the same FIR. The said writ petition was dismissed on 21.12.2023 on the ground that the Petitioners had not disclosed their criminal history. The present petition arises from the same factual matrix and seeks relief connected with the same criminal proceedings. A petitioner who has suppressed material facts in an earlier round does not ordinarily deserve equitable relief in a subsequent petition arising from the same cause. This factor weighs against the exercise of jurisdiction in their favour.

20. The challenge to the order dated 17.11.2023 issuing a proclamation under Section 82 is founded on disputed facts, including the Petitioners' explanation of their conduct, the pendency of anticipatory bail proceedings and the contents of an RTI reply. Whether the Petitioners were avoiding appearance and whether the Investigating Officer correctly assessed the situation are matters requiring factual evaluation, which cannot be undertaken in writ jurisdiction. The learned Chief Judicial Magistrate was satisfied, on the report of the Investigating Officer, that coercive steps were necessary. No patent illegality or violation of mandatory procedure is apparent on the face of the order.

21. The Petitioners' grievance that the Investigating Officer did not disclose the pendency of the anticipatory bail application is also a matter



that cannot be examined at this stage. The existence of such proceedings does not by itself bar the Investigating Officer from seeking appropriate process from the trial court. It is open to the Petitioners to raise such contentions before the learned Magistrate in their recall application, which admittedly remains pending.

22. Insofar as the order dated 03.01.2024 under Section 83 of the Code is concerned, the Petitioners contend that the learned Magistrate ought to have first decided their recall application. However, the record does not indicate that the Petitioners had appeared before the learned Magistrate or that the Investigating Officer reported compliance with the earlier process. The learned Magistrate is entitled to proceed with attachment where he is satisfied that the person has not appeared despite a proclamation. The adequacy of the Investigating Officer's report or the correctness of the inference drawn are not matters which can be tested in writ jurisdiction unless there is a clear jurisdictional defect, which is not shown.

23. The Petitioners have placed much emphasis on the RTI reply and the alleged absence of any General Diary entry regarding the incident of 22.10.2023. These are matters that fall within the realm of evidence. The truthfulness of the FIR version, the existence or absence of diary entries and the admissibility or relevance of any RTI materials are issues to be evaluated during pre-trial or trial proceedings. Writ jurisdiction cannot be invoked to test the veracity of disputed facts or to undertake a mini-enquiry into the merits of the allegations.

24. It is also pertinent that the Petitioners have already availed the remedy of recall before the learned Chief Judicial Magistrate. The remedy is adequate and efficacious. The Petitioners may place all material and all legal submissions before the learned Magistrate, who is competent to assess whether the conditions for issuance or recall of process under



Sections 82 and 83 of the Code are satisfied. The existence of such statutory remedies militates against the exercise of jurisdiction under Article 226.

25. This Court is mindful of the limited parameters for interference with orders passed during the course of a criminal investigation. The High Court does not ordinarily interdict the procedural steps taken by the Investigating Agency or the Magistrate unless there is manifest abuse of process or a clear violation of statutory mandate. In the present case, the Petitioners have been unable to point out any illegality of such nature. The controversy raised by them is intertwined with factual disputes, which cannot be adjudicated in a writ petition.

26. For these reasons, this Court is of the view that no case is made out for exercise of extraordinary jurisdiction. The petition is therefore liable to be dismissed.

ORDER

In view of the foregoing discussion, this Court finds no ground to interfere with the orders dated 17.11.2023 and 03.01.2024 passed by the learned Chief Judicial Magistrate, Kashipur, in connection with FIR No. 551 of 2023. The writ petition is devoid of merit and is hereby dismissed.

It is made clear that this Court has not expressed any opinion on the merits of the allegations in the FIR or on the material collected during the investigation. The Petitioners shall be at liberty to pursue any remedy available to them in accordance with law before the competent court.

(Ashish Naithani J.)

Dated: 18.12.2025

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