

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 703 of 2015**

1. Sachin Singh, S/o. Shri Budhlal, Aged About 18 Years, R/o. Village & Post Surta, Police Station & Tehsil Ramanujnagar, Revenue & Civil District Surajpur, Chhattisgarh.
2. Hiralal, S/o. Sukhdev Ram, Aged About 37 Years, R/o. Village & Post Surta, Police Station & Tehsil Ramanujnagar, Revenue & Civil District Surajpur, Chhattisgarh.

---- Petitioners**Versus**

State of Chhattisgarh, Through- Station House Officer, Police Station Ramanujnagar, Revenue & Civil District Surajpur, Chhattisgarh.

---- Respondent

For Petitioners	:	Mr. Surfaraj Khan, Advocate.
For Respondent/State	:	Mr. S.C.Khakharia, Dy. A.G.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****24/08/2015**

1. Challenge in this petition is to the part of the order dated 03.08.2015 whereby the petitioners have been taken into custody in a pending Sessions Trial No.15/2015 under Section 147, 148, 149, 294, 307, 302 & 325 of IPC. The cognizance against the petitioners were taken by the Court by application of the provisions of Section 319 of Cr.P.C. on 16.07.2015.
2. Learned counsel for the petitioners submits that initially when the order of arrest warrant was issued by an order dated 16.07.2015 that was subject of challenge in Cr.M.P. No.651/2015 before this Court. This Court by order dated 29.07.2015 has canceled the arrest warrant and pursuant thereto the petitioners appeared before the Court on the next date fixed on 03.08.2015.

Learned counsel for the petitioners placing his reliance on **(2014) 3 SCC 92** in between **Hardeep Singh v. State of Punjab** would submit that the petitioners could not have been compelled to ask for furnishing the bail bond as the trial against the petitioners had not commenced and according to Section 319(3) of Cr.P.C. the trial would mean that when the charges are framed. It is stated that since the charge against this petitioners are still to be framed, therefore, the petitioners who are the persons attending the Court could not be put under arrest and could not have been detained by the Court by application of sub-section 3 of Section 319 of Cr.P.C. It is strenuously argued that the Supreme Court has categorically ruled that the commencement of trial would mean that when the charges are framed. He therefore submits that under the circumstances, the detention would be illegal, consequently the petitioners may be set at large immediately.

3. Per contra, learned State counsel opposes the argument and would submit that the petitioners have been rendered as accused and therefore irrespective of framing of the charges, the Court can detain the petitioners and the bail bond is required to be obtained for release.
4. I have heard learned counsel appearing for the parties, perused the pleadings and order sheets.
5. The order sheet would show that on 16.07.2015 while the Court was recording evidence in a session trial, the Court came to a finding that the evidence would show to proceed against the petitioners for the offence, which they appears to have committed and therefore the cognizance was taken. Initially reading of the order of the Court would show that on 16.07.2015, the Court came to a conclusion on the evidence that, it appears from the evidence that the petitioners who are not being the accused has committed the offence and therefore required to be tried together with the accused. Since the petitioners were not attending in person, therefore, arrest warrant

was issued. The said issuance of arrest warrant was subject of challenge before this Court in Cr.M.P.No.651/2015. This Court, by its order dated 29.07.2015, had directed the petitioners to appear in person and canceled the arrest warrant. Consequent thereto, after cancellation of the arrest warrant, the petitioners appeared on 03.08.2015 which was the original date fixed for appearance. On 03.08.2015, the Court observed that since the cognizance has been taken under Section 147, 148, 149, 294, 307, 302 & 325 of IPC and the accused Heeralal and Sachin are present in the Court consequently, by application of Section 319(3) of Cr.P.C., the petitioners are taken into custody.

6. Now the question falls for consideration as to whether the argument advanced by the learned counsel for the petitioners would hold the sway that trial has not commenced against the petitioners as such the petitioners could not have been termed as accused and could not be taken into custody by provisions of Section 319(3) of Cr.P.C.
7. The Supreme Court in case of **Hardeep Singh v. State of Punjab** reported in **(2014) 3 SCC 92** has categorically held as under :-

“38. In view of the above, the law can be summarised to the effect that as “trial” means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the “trial” commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken.”

8. In this case, the trial was already proceeded against the other accused and during the course of trial when the evidence being led, the Court came to the

conclusion to invoke the provisions under Section 319 of Cr.P.C. whereby the petitioners were summoned.

9. For sake of relevance, Section 319 of Cr.P.C. is quoted hereunder :

“319. Power to proceed against other persons appearing to be guilty of offence – (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the court, although not under arrest or upon a summons, may be detained by such court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the court proceeds against any person under sub-section (1) then -

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced.”

10. Reading of Section 319 (3) of Cr.P.C. would show that it allows the Court that any person attending the court, although not under arrest or upon a summons, the Court may detain such person for the purpose of inquiry into, or trial of, the offence which he appears to have committed.
11. Therefore reading of Sub-section 3 of Section 319 of Cr.P.C. would relate back to the trial of the “offence” relate back to the date of framing of charges against the other accused for the offence. Therefore, even if the petitioners

who presented themselves before the Court on 03.08.2015 the trial had commenced of the offence from the date of original framing of charges on the other accused. Sub section 3 of Section 319 of Cr.P.C. speaks about trial and the word “the offence” which he appears to have committed have been used. After the word 'the purpose of the enquiry into, or trial of, the “comma” has been used by the legislature. Meaning thereby, the word offence has been distinctly used in the sub-section 3. Consequently, the word 'trial' has to be read from the date of the charge, which has been framed in the original case for the offence and not for the accused in isolation. Therefore, Sub section 3 of Section 319 of Cr.P.C. stressed upon the word trial of, the offence of which the Court has taken cognizance.

12. In a result, taking the petitioners into custody by the Court below cannot be said to be illegal and the Court was well within its right to take into custody while exercising sub section 3 of section 319 of Cr.P.C. The only course would be opened to the petitioners to apply for the regular bail before the Court below and if such application is made, the Court shall decide the same on its own merits.
13. In view of the foregoing, the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
JUDGE