

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 560 of 2017**

- Shyamlal Sone S/o Shri B. R. Sone, Aged About 74 Years R/o Village Malkharoda, Tehsil Malkharoda District Janjgir Champa Chhattisgarh.

---- **Petitioner****Versus**

- State of Chhattisgarh Through Station House Officer, Police Station Balrampur District Balrampur Chhattisgarh.

---- **Respondent**

For Petitioner	:	Shri Shakti Raj Sinha, Advocate
For Respondent-State	:	Shri Niraj Sharma, Dy. GA for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****13/12/2017**

1. Heard.
2. Learned counsel for the petitioner submits that the only prayer made in this petition is that an application filed under Section 70 sub-section (2) read with Section 437 of the Cr.P.C. has been filed before the Court below and the same could not be decided for the reason that the original records are not available. It is contended that on the earlier occasion while the petitioner was absent, the trial was concluded in his absence and permanent arrest warrant was issued against him and when the permanent arrest warrant was being executed then CRMP No.951/2017 was filed, wherein the co-ordinate Bench of this Court vide order dated 31.07.2017 had stayed the execution of the arrest warrant against the petitioner till the date of fixed for hearing before the trial Court. Thereafter, when the petitioner appeared before the

trial Court and moved the application under Section 70 (2) read with Section 437 of the Cr.P.C. on 09.08.2017 and before that he entered his appearance, however, the said application could not be decided since the original record was missing. Consequently, time was again extended in CRMP No.1150/2017 vide order dated 28.08.2017 up till 03.10.2017, even then the application could not be decided by the trial Court as the original records were missing. Therefore, it is submitted that the application filed under Section 70 (2) read with Section 437 of the Cr.P.C. may be directed to be decided and till then no coercive steps may be taken against the petitioner, otherwise he would be arrested in execution of the permanent arrest warrant and the arrest warrant and the trial also could not be commenced.

3. Perused the order dated 31.07.2017 passed in CRMP No.951/2017, wherein the interim protection was granted to the petitioner that permanent warrant of arrest against the petitioner shall not be executed till the date fixed for hearing before the trial Court. It appears, thereafter the petitioner appeared before the Court below and moved application under Section 70 (2) read with Section 437 of the Cr.P.C. for cancellation and recall of the permanent arrest warrant and the same could not be decided by the trial Court as the order-sheet of the trial Court dated 24.08.2017 would show that the original record of the case is missing. Consequently, this Court again in CRMP No.1150/2017 on 28.08.2017 had extended the period of appearance of the petitioner till 03.10.2017.
4. In view of the existing facts, since the order of the Court records that the original record is still missing and also taking into the fact that the co-ordinate Bench has granted the interim protection to the petitioner for his appearance, it is directed that the execution of the permanent arrest warrant

shall not be given effect to up till the application filed under Section 70 sub-section (2) read with Section 437 of the Cr.P.C. is decided on merits. It is also directed that the trial Court shall make all possible endeavour to search the original record and thereafter shall decide this application.

5. With such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri

Judge

Ashu