

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 6th July , 2018

+ **W.P.(CRL) 1732/2018**

POONAM TIWARI

..... Petitioner

Represented by: Mr. M.S. Yadav, Mr. Ashok
Tobria, Ms. Mamta Singh
Shukla and Mr. S.Y. Urmani,
Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr. Rahul Mehra, Standing
Counsel with Mr. Jamal
Akhtar, Advocate with Insp.
Ramkishan, PS Sagarpur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A. No. 10697/2018 (Exemption)

Allowed, subject to all just exceptions.

W.P.(CRL) 1732/2018

1. By this petition, the petitioner prays as under:-

- I. *Issue a writ in the nature of Mandamus or any other appropriate Writ(s) or Direction(s) or Order(s) of similar nature thereby issuing guidelines that proceeding under Section 82 Cr.p.c. can not be initiated other than sections mentioned in Section 82 Sub-Section(4) of Cr.p.c.*
- II. *Pass a direction to the Commissioner of Delhi Police to issue direction/guideline to Delhi police to follow the provisions laid down by the Law.*
- III. *Action should be taken against the police officer who had manipulated the investigation and who had misguided*

and given false and wrong Statement/Status Report before the Hon'ble High Court and Ld. Trial Court.

IV. Release the petitioner/co-accused as she had been illegally taken into custody and in judicial Custody since 42 days without following the due process of Law.

2. The grievance of the petitioner in nutshell from the contents of the petition as stated is that though FIR No. 261/2016 under Sections 498A/304B/34 IPC was registered on 24th April, 2016 and her son Chandan Tiwari was arrested on the same day, the petitioner was never summoned as an accused. Even in the chargesheet filed against the petitioner's son on 22nd July, 2016 the petitioner was not kept in column No. 11 nor any legal proceedings initiated against her on record. Even in the committal order there was no mention of the petitioner. Charge against the main accused was framed on 27th August, 2016 mentioning that co-accused Poonam Tiwari was absconding but again the petitioner did not know her status. It is further stated that the son of the petitioner filed a bail application before this Court which came up for hearing on 31st October, 2017 wherein it was mentioned that co-accused, Poonam Tiwari, was still absconding and the process under Section 82 Cr.P.C. has been initiated against her and the consequent proceedings for declaring proclaimed offender is pending before the Trial Court.

3. Learned counsel for the petitioner contends that on the Court record there were no proceedings pending actually and the petitioner was illegally declared a proclaimed offender. A perusal of the paper book filed by the petitioner and the status report reveals that since the petitioner was not available and was absconding proceedings under

Section 82 Cr.P.C. were initiated against the petitioner. It is nowhere stated that the petitioner was declared a proclaimed offender under Section 82 Cr.P.C.

4. It is well settled that for declaring a proclaimed offender under Section 82 Cr.P.C. police has to first justify that despite the efforts to arrest, the person is evading the arrest. In this regard non-bailable warrants were issued by the learned Metropolitan Magistrate which were sought to be executed, on which reports were submitted. Before the petitioner could be declared proclaimed offender under Section 82 Cr.P.C. the petitioner filed an application seeking anticipatory bail before the learned Additional Sessions Judge wherein the trial against her son was going. In the application for anticipatory bail vide order dated 16th January, 2018 the learned Additional Sessions Judge directed “ In this matter the trial is already going on in this Court and the said matter is now listed for 16th February, 2018, so bail matter is also fixed for the same date, till then no coercive steps shall be taken by Investigating Officer against applicant/accused”.

5. Since an interim protection was granted to the petitioner by the learned Additional Sessions Judge vide order dated 16th January, 2018 the petitioner was made to join the investigation and a chargesheet qua her without arresting her was filed as is evident from the document of the Investigating Officer dated 9th February, 2018 annexed as Annexure-K at page 109 of the paper book. Since the learned Additional Sessions Judge had granted interim protection to the petitioner, the learned Metropolitan Magistrate on 19th March, 2018 dropped proceedings under Section 82 Cr.P.C. as the petitioner had

already joined the investigation. On 10th April, 2018 the learned Additional Sessions Judge dismissed the anticipatory bail application of the petitioner whereafter she surrendered and was sent to judicial custody.

6. Contention of learned counsel for the petitioner that since chargesheet was filed without arrest, there was no justification in keeping her in custody deserves to be rejected for the reason the chargesheet was filed when there was an interim protection in favour of the petitioner and even if the police officer required the custodial interrogation he could not have resorted to the same.

7. Further the contention of learned counsel for the petitioner that proceedings in two courts could not have gone though simultaneously also deserves to be rejected for the reason the learned Metropolitan Magistrate is the Court of original jurisdiction where the chargesheet is required to be filed whereafter committal is done to the Court of learned Additional Sessions Judge and since no chargesheet was filed against the petitioner and no investigation could be carried out against her for want of joining the investigation, non-bailable warrants were required to be got issued from the Court of Learned Metropolitan Magistrate. Thus non-bailable warrants were sought from the learned Metropolitan Magistrate by the police officer in accordance with law on an application seeking process under Section 82 Cr.P.C. which were dropped on 19th March, 2018 as the petitioner had joined the investigation. The second proceedings were on the anticipatory bail application filed by the petitioner before the learned Additional Sessions Judge which was decided independently and dismissed on

10th April, 2018. The two proceedings cannot be clubbed together. The petitioner is in custody since the date of surrender i.e. 10th April, 2018 and as noted the procedure adopted by the investigating agency is in accordance with law, thus, no case is made out for issuing any guidelines or holding that any misguided or wrong statement/status report was filed before this Court or that the custody of the petitioner is illegal.

8. Petition is dismissed.

6TH JULY , 2018
'yo'

(MUKTA GUPTA)
JUDGE



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