

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.627 of 2019

Arising Out of PS. Case No.-259 Year-2015 Thana- SHRIKRISHNAPURI District- Patna

Manoj Kumar Jaipuriyar, S/o Late Suresh Chandra, Resident of Mohalla-BSIDC Colony, Aadri Gali, House No. 37, Boring Road, P.S.- Shri Krishnapuri, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Bihar, Patna
2. The Senior Superintendent of Police, Patna.
3. The Officer Incharge Shri Krishnapuri, P.S., Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ravi Bhardwaj, Advocate Mr. Rachna Saraswati, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 17-04-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for quashing the orders dated 01.07.2016 and 06.09.2018 passed by the learned 1st Additional Sessions Judge, Patna in connection with Shri Krishnapuri P.S. Case No. 259 of 2015 registered under Section 376(2)(f) of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act whereby non-bailable warrant of arrest and process under Section 82 of the



Code of Criminal Procedure (for short 'Cr.P.C.') respectively have been issued against the petitioner.

3. It is submitted by the learned counsel for the petitioner that though the first information report was instituted on 22.07.2015, the petitioner had no knowledge about the case. Thus, he could not take any steps in connection with the case. He came to know about the first information report only on 13.01.2019 when the notice under Section 82 of the Cr.P.C. was pasted on his premises. In absence of any summon or bailable warrant of arrest issued against the petitioner, issuance of non-bailable warrant of arrest and process by the court is wholly illegal.

4. *Per contra*, learned counsel appearing for the State submitted that apart from the writ petition being not maintainable in view of the ratio laid down by a Special Bench of this Court in the material of **Surender Singh and Ors. v. The State of Bihar and Ors. [1990 (2) PLJR 693]**, the impugned orders do not suffer from any illegality. He contended that the petitioner has been made accused in a serious case under Section 376(2)(f) of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act. Since, he was evading arrest, on the application of the investigating officer, the warrant of arrest was issued in accordance with the provisions prescribed under Section



73 of the Cr.P.C. Similarly, in spite of the issuance of the non-bailable warrant of arrest, since the petitioner was evading arrest in spite of the non-bailable warrant of arrest, process under Section 82 of the Cr.P.C. was issued against him on the application of the investigating officer.

5. Having heard learned counsel for the parties and perused the record, I find substance in the submission of the learned counsel for the State that in view of the statutory remedy of revision being available to the petitioner against the orders impugned, it would not be proper for this Court to entertain the application in exercise of extraordinary writ jurisdiction under Article 226 or supervisory jurisdiction under Article 227 of the Constitution of India.

6. Learned counsel for the State has rightly placed reliance in this regard on the judgment of this Court in **Surender Singh (supra)**. In the said case, in Para-17, the Special Bench held as under:-

“17. Accordingly, I am of the view:—

(i) Judicial orders passed by the criminal courts are amenable to the jurisdiction of the High Court under Article 227 of the Constitution.

(ii) Where appeals or revision applications or applications under section 482 of the Code are maintainable before this Court for setting aside such



orders there is no question of exercise of power under Article 227.

(iii) Where appeals or revision applications or applications under section 482 of the Code cannot be entertained by this Court for setting aside such orders, power under Article 227 can be exercised in exceptional cases.

(iv) Where petitioner has already invoked the revisional jurisdiction of the Sessions Judge under section 397 of the Code and his second revision application to this Court is barred Under section 397(3) it would indeed require very exceptional circumstances to warrant interference under Article 227 of the Constitution, since the power of the superintendence is not meant to circumvent the statutory bar.”

7. In view of the above conclusions, since a revision application or application under Section 482 of the Cr.P.C. are maintainable against the orders impugned before this Court, it would not be proper for me to pass order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

8. Apart from the above finding, when I look at the allegations made in the first information report, it would appear that the same has been instituted on the basis of fardbeyan of a minor girl aged about 10 years. She has alleged that she has come to the house of the petitioner two months prior to the lodging of



the first information report for purpose of house-hold work. The wife of the petitioner was a teacher in DAV School and when she used to leave the house for school then, the petitioner used to commit wrong/illegal act with her and on her refusal, she was assaulted by him. On 21.07.2015, the petitioner touched her private parts and other parts inappropriately and even forcefully tried to do wrong work with her whereafter she somehow ran away from the house and went to the police station.

9. It is on the basis of such allegations the first information report was instituted and investigation was taken up. In spite of the institution of the aforesaid first information report, the petitioner did not appear before the Court for quite a long time. The police failed to apprehend him, as he was evading arrest. Under such circumstance, on the application of the investigating officer, the court issued the impugned orders dated 01.07.2016 whereby non-bailable warrant of arrest was issued against the petitioner. In spite of the issuance of non-bailable warrant of arrest when the police could not locate the petitioner, another application was filed by the investigating officer on the basis of which proclamation order under Section 82 of the Cr.P.C. was issued vide order dated 06.09.2018.



10. In view of above reasons, I do not find any illegality in the impugned orders passed by the court below, as Section 73 of the Cr.P.C. confers jurisdiction upon the court to issue non-bailable warrant of arrest against a person who is accused of a non-bailable offence and is evading arrest and Section 82 of the Cr.P.C. confers power upon the court to order for publishing written proclamation requiring an accused to appear at a specified place and at a specified time if it has reason to believe that any person against whom a warrant has been issued by it has absconded or concealing himself so that such warrant can not be executed.

11. The application is devoid of any merit. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/R.Ranjan-

AFR/NAFR	NAFR
CAV DATE	NA
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