

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.196 of 2020

Arising Out of PS. Case No.-462 Year-2019 Thana- CHANDI District- Nalanda

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Anil Kumar @ Anil Paswan S/o Ram Bhawan Paswan Resident of Village -
Paharpur, P.S.- Baina, District- Nalanda.

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Nalanda.
4. The Officer - In Charge, Chandi P.S. District- Nalanda.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate
For the State	:	Mr. M.M.H. Khan, SC-1
		Mr. Md. Fazle Karim, AC to SC-1
For the Respondent/s	:	Mr. M. Nasrul Huda Khan

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 19-02-2020 Learned counsel is permitted to make corrections in the typographical error with regard to the date of the impugned order and the word 'petitioners' which should be 'petitioner'.

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

The petitioner in this case is aggrieved by and dissatisfied with the order dated 10.12.2019 and 20.01.2020 passed by learned A.C.J.M.-1st Hilsa, Nalanda by which on the requisition presented by the Sub-Inspector of Chandi Police Station, a warrant of arrest under Section 73 of the Code of Criminal Procedure (Cr.P.C.) was issued and then process under



Section 83 Cr.P.C. has been taken out.

Learned counsel submits that the F.I.R. in question was lodged on 06.12.2019 for the offences alleged under Section 302/34 I.P.C. and 27 of the Arms Act. On 10.12.2019 a requisition was filed by the Investigating Officer for issuance of a warrant of arrest against the petitioner and on the said date warrant of arrest was ordered to be issued. On 11.12.2019 the petitioner applied for anticipatory bail in the Court of Learned Sessions Judge, Nalanda at Bihar Sharif which later on came to be rejected on 13.01.2020. Thereafter, the petitioner was preparing to move this Court with a prayer for anticipatory bail and, in fact, the anticipatory bail application was presented before this Court on 04.02.2020 but in the meantime on 20.01.2020 again on the prayer of the Investigating Officer the learned A.C.J.M. passed an order for publication of proclamation as envisaged under Section 82 Cr.P.C.

Learned counsel submits that prior to issuance of the order for publication of proclamation, the learned A.C.J.M. has not recorded any reason to believe that the petitioner is either absconding or is concealing himself so that the warrant of arrest issued against them cannot be executed. It is his submission that nothing was shown to learned A.C.J.M. to demonstrate that the



petitioner was removing his properties. No material was brought before the learned court below to show as to what steps were taken by the Investigating Officer to arrest the accused person and the fact that the petitioner is seeking his remedy of anticipatory application were not brought to the notice of the learned court below.

On these grounds, it is pleaded that the order for publication of proclamation suffers from legal infirmities and the same is liable to be quashed. At this stage, it is submitted that the petitioner has filed Cr. Misc. Case No. 8859 of 2020 which is pending consideration before this Court and learned counsel submits that he has instructions to say that in case the said Criminal Miscellaneous Application is disposed of without there being any order granting relief to the petitioner, the petitioner shall immediately surrender and appear in the court below.

Learned counsel for the State has opposed this application as according to him, no illegality or infirmity may be found with the order issuing warrant of arrest and the publication of proclamation as envisaged under Section 73 and 82 Cr.P.C. respectively.

Having heard learned counsel for the parties and on



perusal of the records particularly the impugned orders, this Court finds that so far as order dated 10.12.2019 passed by which warrant of arrest has been issued against the petitioner, does not suffer from any infirmity. It appears that the Investigating Officer had submitted a requisition that the raids were conducted to arrest the petitioner but he was evading the arrest and hence, warrant of arrest be issued. The order dated 10.12.2019, therefore, needs no interference.

So far as the order dated 20.01.2020 by which the learned A.C.J.M. has directed for publication of proclamation is concerned, this Court finds substance in the submissions of learned counsel for the petitioner. Section 82 Cr.P.C. reads as under:

“82. Proclamation for person absconding.”-(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily



resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court- house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub- section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

¹[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.]

¹[(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section(4) as they apply to the proclamation published under sub-section(1).]”

It has been held by judicial pronouncements that the word “reason to believe” clearly indicates that the Court must have some basis to take a view that the accused person is

1. Ins. by Act 25 of 2005,sec. 12(w.e.f. 23-6-2006).



absconding and/or that he is concealing himself so that such warrant cannot be executed. For this purpose, the Investigating Officer is required to place on record the steps taken by him to arrest the accused person and the satisfaction of the court must be a subjective satisfaction before passing an order for publication of proclamation.

In this case, the petitioner had applied for his remedy before the learned Sessions Judge on 11.01.2020 and this fact was known to the Investigating Officer and further it should have been shown that the Investigating Officer had taken all such steps which were required to arrest him but the accused was concealing himself.

In the order dated 20.01.2020 the learned A.C.J.M. has only recorded the requisition made by the Investigating Officer which was forwarded by S.D.P.O. and has not at all recorded its satisfaction and reasons to believe and, therefore, in the opinion of this Court, the impugned order dated 20.01.2020, on the face of it, suffers from infirmity.

The recording of reasons is mandatory. This Court, therefore, sets-aside the order dated 20.01.2020 passed in Chandi P.S. Case No. 462 of 2019 and remit the matter to the Court of learned A.C.J.M.-1st Hilsa, Nalanda to pass a fresh order in accordance with Section 82 of the Code of



Criminal Procedure.

Since this Court has not interfered with the order dated 10.12.2019, it will be open for the Investigating Officer to seek a fresh warrant of arrest against the petitioner and execute them in accordance with law.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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