

01.12.2020

Item No.7
Ct.No.13
dc.

C.R.R. 1334 of 2020

with

C.R.A.N. 1 of 2020

(Through Video Conference)

Momtaj Bibi & Ors.

versus

The State of West Bengal

Mr. Satadru Lahiri,
Mr. Safdar Azam ... For the Petitioners.

Mr. Arijit Ganguly ... For the State.

Mr. Lahiri, learned advocate appearing for the petitioners viz. Momtaj Bibi, Mamuda Bibi @ Mamhuda Bibi and Khadija Molla @ Khadija Mollya submits that the proclamation and attachment was issued without any report regarding the execution of warrant of arrest and the prayer for proclamation and attachment was issued mechanically by the learned court below. According to the learned advocate for the petitioners, the order has seriously prejudiced the present petitioners in view of the fact that the petitioners were not named in the FIR and in course of investigation, harsher process of law was resorted by the investigation agency without compliance with the necessary provisions under the Code of Criminal Procedure.

Mr. Arijit Ganguly, learned advocate appearing for the State submits a report dated 24.11.2020 which has been submitted pursuant to the order passed by this Court on 17.11.2020. The said report be kept with the record. The report reflects that on 11.03.2020, a prayer was submitted

before the learned Magistrate and there was a non-execution report pursuant to which proclamation and attachment was issued.

I have perused the said report and the order dated 11.03.2020 passed by the learned Additional Chief Judicial Magistrate, Basirhat. On perusal of the same, I find that the order so passed should have expressed certain subjective satisfaction for issuing the proclamation and attachment parallelly. In view of the order so passed, the authorities have already executed the said proclamation and attachment.

Further contention of the learned advocate for the petitioners is that in view of the steps taken by the investigating authorities and the orders so passed, the liberty of the present petitioners have been seriously prejudiced and the same requires to be reconsidered by this Court in the background of the manner in which proclamation and attachment was issued.

Having considered the fact that the petitioners' anticipatory bail had to be withdrawn in view of the issuance of such proclamation and attachment, I am of the opinion that the petitioners must be afforded an opportunity to press their application under Section 438 of the Code of Criminal Procedure on merits of the case.

Accordingly, the proclamation and attachment so issued on 13.04.2020 and executed on 21.04.2020 be stayed for a period of two weeks from date. Within the said period, the petitioners would be at liberty to exhaust their rights under Section 438 of the Code of Criminal Procedure.

Needless to state that the authorities need not recall or withdraw the proclamation and attachment, however, no effect to the same should be given till 15.12.2020.

It is made clear that the aforesaid order is restricted only to the present three petitioners who are ladies belonging to the family of the accused persons.

The learned court below is directed to act in terms of the copy of the order downloaded from the official website of this Court.

CRR 1334 of 2020 and CRAN 1 of 2020 are disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the necessary formalities.

(Tirthankar Ghosh, J.)