

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 441 of 2021**

Naresh @ Narendra Kumhar, S/o Mansingh Kumhar, Aged 33 years, R/o Village Radbahar, P.S. Belpoda, Dist. - Balangir (Udisa) Present Resident – Vinod Tondon Dairy Farm, P.S. Mandir Hasaud, Distt. Raipur (C.G.)

---- Applicant**Versus**

State of C.G., Through – Office In Charge, Police Station Mandir Hasaud Raipur, Tah. & Dist. Raipur

----Non-applicant

For Applicant	: Mr. Badruddin Khan, Advocate.
For Non-applicant	: Mr. Raghvendra Verma, Govt. Advocate.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****23.07.2021**

(1) The proceedings of matter have been taken-up through Video Conferencing.

(2) This revision is directed against the order dated 25.02.2020 passed by Upper Sessions Judge (FTC), Raipur in Session Trial No. 40/2011, whereby application filed by the applicant under Section 317 of the Code of Criminal Procedure, 1973 (henceforth "the Code") has been dismissed, and order for issuance of warrant of arrest against the applicant was passed.

(3) Learned counsel appearing for the applicant would submit that due to covid-19 pandemic situation, transport facilities were not operating and even moving from one place to another place was also restricted/prohibited by the Administration and, on account of which, the applicant could not appear on the

date of hearing i.e. on 25.2.2020 before the trial Court, therefore, application under Section 317 of the Cr.P.C. was filed through his Advocate. In the aforesaid situation, the trial Court ought to have granted him leave for appearance on that date and his appearance must be accepted through his counsel but the trial Court, without considering all these facts, arbitrarily rejected his application filed under Section 317 of the Cr.P.C. and accordingly the bail bonds furnished on behalf of the applicant were cancelled and order for issuance of warrant of arrest against the applicant was passed, which is erroneous, arbitrary and unsustainable in law.

(4) Per contra, learned counsel for the State would submit that impugned order passed by the trial Court is interlocutory order and according to sub-Section (2) of Section 397 of the Code, powers of revision shall not be exercised in such interlocutory orders.

(5) I have heard learned counsel for the parties and perused the impugned order.

(6) At this stage, it would be appropriate to notice the provision contained in sub-Section (2) of Section 397 of the Code, which reads thus :-

“ (2) The powers of revision conferred by sub-Section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings.”

(7) Instant revision petition has been preferred by the applicant against the order, by which applicant's application under Section 317 Cr.P.C. has been rejected and by cancelling his bail bonds, order for warrant of arrest was also passed against him.

(8) The order impugned is an interlocutory order by nature, therefore, this revision is not maintainable in view of provision contained in sub-Section (2) of Section 397 of the Code.

(9) It is also pertinent to mention here that if the applicant is aggrieved with impugned order by which, bail bonds furnished on behalf of the applicant were cancelled and warrant of arrest has been issued against the applicant, then he can file an application under sub-Section (2) of Section 70 of the Code for cancellation of order of warrant of arrest issued against him before the trial Court. Thus, alternative remedy of filing application under Section 70 (2) of the Code is also available to the applicant, which could be availed by him by filing such an application before the learned trial Court. It is noteworthy to mention here that if such an application is filed by the applicant before the trial Court, then it ought to be considered and decided by the trial Court taking liberal view looking to the covid-19 pandemic situation / lockdown / post covid-19 pandemic situation and also movement restricted / prohibited by the administration.

(10) In view of above, since the impugned order is interlocutory order, powers of revision conferred by sub-Section (1) of Section 397 of the Code shall not be exercised in relation to such order. Thus, the revision is liable to be and is hereby dismissed as not maintainable.

Sd/-
(N.K.Chandravanshi)
Judge

D/-

