

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

IA No: CRAN/3/2022

In

CRR 384 of 2022

Nazrul Islam.

Vs.

State of West Bengal

**For the petitioner : Mr. Sourav Chatterjee, Adv.
Mr. Satadru Lahiri, Adv.
Mr. Safdar Azam, Adv.**

**For O.P. No.2. : Mr. Kallol Mondal, Adv.
Mr. Krishan Ray, Adv.
Mr. Souvik Das, Adv.
Mr. Samsheer Ansari, Adv.**

**For the State : Mr. Madhusudan Sur, A.P.P.
Mr. Dipankar Paramanick, Adv.**

Heard on : 15.09.2022

Judgment On : 15.09.2022.

Bibek Chaudhuri, J.

Affidavit-of-service be kept with the record.

The instant revision is taken up for hearing.

An order dated 10th November, 2021 passed by the learned
Additional Chief Judicial Magistrate at Basirhat in G.R. Case No.4082

of 2020 wherein the learned Magistrate issued warrant of attachment and proclamation simultaneously is under challenge in the instant revision at the instance of the accused /petitioner.

It is submitted by Mr. Chatterjee, learned Advocate for the petitioner that simultaneous order of attachment and proclamation was passed by the learned Magistrate even without receiving non-execution report in respect of the warrant of arrest issued against the petitioner previously.

It is also submitted by the learned Advocate for the petitioner that in one and single order both proclamation and attachment of the property of the accused cannot be passed. Therefore, the order suffers from inherent illegality.

Mr. Chatterjee also takes me to page 42 of the supplementary affidavit which is a photostat copy of an order dated 23rd December, 2021 passed by the Division Bench upon an application under Section 438 of the Code of Criminal Procedure filed by the petitioner (CRM No.7316 of 2021). On perusal of the said order passed by the Division Bench of this Court, it is found that though the application for anticipatory bail was affirmed on 8th November, 2021 and it was filed on 10th November, 2021, the Division Bench by an order dated 23rd December, 2021 refused grant of anticipatory bail in favour of the

petitioner on the ground that the petitioner has been declared as a proclaimed offender.

Be that as it may, judicial discipline does not permit me to observe anything in respect of the order passed by the Division Bench of this Court in CRM 7316 of 2021 rejecting the prayer for anticipatory bail on 23rd December, 2021.

It is frankly submitted by Mr. Chatterjee that as the petitioner was declared as a proclaimed offender, he is not in a position to take out an application for anticipatory bail. The order dated 10th November, 2021 suffers from inherent irregularities. Therefore, the said order ought to be set aside.

Mr. Kallol Mondal, learned Advocate for the private opposite party/de-facto complainant, on the other hand, draws my attention to the order dated 22nd October, 2021. It appears from the order dated 22nd October, 2021 that the police authority submitted non-execution report against the petitioner in respect of the warrant of arrest pending against him. However, the said non-execution report was not accepted by the learned Magistrate on the ground that the Investigating Officer prayed for to give another opportunity to him for execution of warrant of arrest. Thus, he submits that the learned Magistrate declared the accused a proclaimed offender on receipt of non-execution report of warrant of arrest on 22nd October, 2021.

Mr. Madhusudan Sur, learned Public Prosecutor-in-Charge, submits that the order for attachment and proclamation is otherwise valid and there is no reason to interfere with the said order.

Having heard the learned Counsels for the parties and on careful perusal of the record, it is ascertained that the Trial Court practically did not accept non-execution report of warrant of arrest vide order dated 22nd October, 2021. Therefore, in the order impugned dated 10th November, 2021 it is clearly stated that no execution report was received by the learned Magistrate.

In view of such circumstances, issuance of warrant of attachment and proclamation is *per se* illegal.

In view of the above discussion, the order dated 10th November, 2021 be set aside.

The instant revision is accordingly **allowed on contest**.

With the disposal of the instant revision, connected applications are also **disposed of**.

As the warrant of attachment and proclamation has been set aside, warrant of arrest issued against the petitioner automatically revive. It is made abundantly clear that the Investigating Officer is at liberty to execute the warrant of arrest against the petitioner which is pending for execution.

At the same time, petitioner is at liberty to take recourse as provided under the law.

(Bibek Chaudhuri, J.)

***Mithun De/
A.R. (Ct).
SI No.16..
D/L.***