

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 1318 of 2021

Anup Majee

-Vs-

Union of India

For the Petitioner: Mr. Bikash Ranjan Bhattacharya, Sr. Adv.,
Mr. Debasis Roy, Adv.,
Mr. Ranadeb Sengupta, Adv.,
Ms. Ankita Upadhyay, Adv.,
Ms. Sreemayi Roy, Adv.

For the CBI: Mr. Dhiraj Trivedi, Adv.,
Mr. Samrat Goswami, Adv.,
Mr. Shailendra Kumar Mishra, Adv.

Heard on: 6 and 7 July, 2022.

Judgment on: 22 July, 2022.

BIBEK CHAUDHURI, J. : –

1. Legality, validity and propriety of an order dated 16th April, 2021 passed by the learned Special Judge, CBI Court at Asansol in connection with RC Case No.22 of 2022 corresponding to CBI SPE ACB KOLKATA Case No. RC0102020A0022 dated 27th November, 2020 under Sections 120B/409 of the Indian Penal Code read with Section 13(2) and 13(1)(a) of the Prevention of Corruption Act, thereby rejecting an application for recalling of the order dated 24th December, 2020 issuing warrant of arrest

against the petitioner and recalling consequential order of proclamation dated 11th January, 2021 and order of attachment dated 18th February, 2021 are under challenge in the instant revision.

2. For proper appreciation of the matter, the following facts are necessary to be brought on record :-

3. By an order dated 16th November, 2018 the State of West Bengal withdrew consent under Section 6 of the Delhi Special Police Establishment Act. The consequence of such withdrawal of consent is an issue, pending for disposal along with several other cases before the Hon'ble Supreme Court. On 27th November, 2020 CBI registered FIR Case No.RC0102020A0022 against the petitioner and others under Sections 120B/409 of the IPC read with Sections 13(2)/13(1)(a) of the Prevention of Corruption Act. Notices were served under Section 41A of the Code of Criminal Procedure to the petitioner calling upon him to appear before the Investigating Officer for interrogation on 5th December, 2022, 7th December, 2020 and 10th December, 2020. The petitioner duly replied on receipt of such notices but did not physically appear before the Investigating Officer. On 10th February, 2021 the petitioner filed WPA No.10457 of 2021 under Article 226 of the Constitution of India challenging, inter alia, the legality, validity and propriety of initiation of investigation by CBI in view of withdrawal of consent required under Section 6 of the Delhi Special Police Establishment Act in the State of West Bengal and for declaration that the registration of FIR against him and subsequent investigation ultra vires Section 6 of the said Act. On 24th

December, 2020 the Investigating Officer filed an application before the learned Special Judge, CBI Court at Asansol for issuance of warrant of arrest due to non appearance of the petitioner before the Investigating Officer. The learned Special Judge, CBI Court issued warrant of arrest against the petitioner on the basis of the prayer made by him the Investigating Officer of the case. On 11th January, 2021, the Special Court passed an order of proclamation against the petitioner. In the mean time, WPA No.10457 of 2020 was disposed of by a Coordinate Bench on 3rd December, 2021. Two appeals being MAT No. 154 and MAT No.167 of 2021 were filed by the petitioner before the Division Bench of this Court. The Division Bench passed an order in the said two appeals on 12th December, 2021. On 18th February, 2021, order of attachment was passed by the learned Special Judge, CBI Court at Asansol. On the selfsame date the petitioner filed Special Leave Petition (Criminal) before the Hon'ble Supreme Court of India which was registered as Special Leave to Appeal No.1620-1621 of 2021. On 25th March, 2021 a three Judges Bench of the Hon'ble Supreme Court passed an order directing the petitioner to assist the investigation before the CBI and cooperate with the Investigating Officer subject to the condition that the petitioner would not be arrested till 6th April, 2021. As per solemn order passed by the Hon'ble Supreme Court the petitioner duly appeared before the Investigating Officer for interrogation during the period between 30th March, 2021 and 6th April, 2021. The interim protection was subsequently extended by the Hon'ble Supreme Court vide order dated 6th April, 2021. A petition filed by

the petitioner for recalling of the order dated 24th December, 2020 issuing warrant of arrest against the petitioner and also for recalling of the consequential order of proclamation dated 11th January, 2021 and order of attachment dated 18th February, 2021 was rejected by the learned Special Judge, CBI Court. On 27th April, 2021 and 3rd May, 2021 petitioner appeared before the Investigating Officer. On 10th May, 2021 the SDO Bidhannagar attached the residential house of the accused at Kolkata and office situated at Salt Lake City Centre by affixing a notice of attachment. In the instant revision the petitioner has also challenged the order dated 16th April, 2021 passed by the learned Special Judge, CBI at Asansol.

4. The impugned order dated 16th April, 2021 passed by the learned Special Judge, CBI Court at Asansol in RC Case No.22 of 2020 is replicated below:-

“Today is the date fixed for hearing of the petition filed by accused Anup Majhi for recalling of the orders dated December 24, 2020 issuing Warrant of Arrest against Sri Anup Majhi and recalling of the consequential order of proclamation dated 11.01.2021, order of attachment dated 18.02.2021, passed by this court.

It is submitted by the Ld. Counsel appearing for the accused petitioner that this petitioner has been granted interim bail by the Hon'ble Supreme Court while entertaining an application filed by the accused petitioner challenging the legality, validity and propriety of initiation of the investigation of the members of the Delhi Police-Establishment in the state of West Bengal as well as

praying for declaration that the registration of the said FIR and subsequent investigation is ultra vires section 6 of the Delhi Special Police Establishment Act, 1946.

The Hon'ble Supreme Court in the process after hearing the respective parties, on March 25, 2021 a bench comprising the Hon'ble Justice D.Y.Chandrachud, the Hon'ble Justice M.R. Shah and the Hon'ble Justice Sanjiv Khanna has been pleased to pass an order in the following manner: "The court will be in recesses commencing from 28 March, 2021 until 4th April, 2021. As a result of the forthcoming recesses, it would not be possible for the court to finally hear and dispose of the present proceedings, before 5 April, 2021. The court has been moved under article 136 of Constitution in a batch of cases both against the orders of the single Judge of Calcutta High Court and of the Division Bench in appeal. The Special Leave Petitions against orders of the single Judge have been filed because in the event that it is held that the Letters Patent Appeals before the Division Bench were not maintainable, the order of the single judge would be amenable to a challenge before this court. A challenge to the jurisdiction of the Central Bureau of Investigation to investigate an offence falling within the territory of the State of West Bengal has been raised on behalf of some of the petitioners.

On the other hand, the learned Solicitor General has sought to support the exercise of jurisdiction, notwithstanding the withdrawal of consent by the State of West Bengal on 16 November 2018, under the provisions of the Delhi Special Police Establishment Act.

At this stage, since the court would not be in a position to conclude arguments before the ensuing recess, an ad-

interim protection is necessary to safeguard the liberty of the petitioner until the proceedings are heard.

Conditional on the petitioner (Anup Majee) joining in the investigation before the Central Bureau of Investigation and cooperating in the investigation, we direct that he shall not be arrested until 6 April 2021. This order has been passed without the Court expressing any opinion on the merits of the rival contentions, as a pro-tem direction in view of the ensuing recess. This order shall not operate as a restraint on the investigation in the meantime. All the rights and contentions of the parties are kept open to be considered when the proceedings are taken up on 6 April 2021.

List the Special Leave Petitions on 6 April 2021 for hearing and final disposal, immediately after the fresh matters."

From 6 April, 2021 till date the interim order so passed by the Hon'ble Supreme Court has been extended time to time and finally has been extended till 27th of this month (April, 2021).

Having gone through the text of the order passed by the Hon'ble Supreme Court I did not find that the Hon'ble Court has passed any order staying the orders passed by this court or has made any comment as regards the propriety of the orders passed by this court. Though it is a fact that the accused petitioner is appearing before the investigating agency as per the direction of the Hon'ble Apex Court yet the orders that were passed by this court and sought to be recalled were passed prior to the Hon'ble Apex Court's orders. Ld. Counsel appearing on behalf of the accused petitioner relied upon two Judgments and invited the attention of this court to paragraphs 13 onwards of the judgment reported in (2000) 10 SCC 438, State through CBI

Vs. Dawood Ibrahim Kaskar and Others. I have carefully gone through the paragraphs in which attention of this court was invited and found that Hon'ble Apex Court has explained the process and circumstance when court can issue "process to compel appearance" and in my opinion this court did not pass any order that might be termed as illegal until and unless the Apex Court declares the very registration of FIR is without jurisdiction.

Moreover, challenge was made by filing a writ petition before the Hon'ble High Court at Calcutta regarding the investigating agency's authority to conduct the investigation, did fetch a favourable order from the single judge which was appealed against by CBI before the Division Bench of the Hon'ble High at Calcutta. The order of Hon'ble Single Bench was stayed by the Division Bench, fixing the hearing of the matter on 27th April, 2021. Being aggrieved by the order of the Hon'ble Division Bench at Calcutta the accused petitioner moved the Hon'ble Apex Court. The Hon'ble Apex Court so far has not stayed the order passed by this court nor that of the Hon'ble Division Bench of High Court at Calcutta but has only granted an interim relief to the effect of not to arrest the petitioner on the condition that petitioner shall appear and cooperate in the investigation conducted by the investigating agency. Having said this far, I am to hold that the appearance of the accused petitioner on the basis of the order passed by the Apex Court does not in any way negates the orders passed by this court which are sought to be recalled by dint of this application. In my opinion the circumstance still remain due to which the orders were passed by this court As till date the accused petitioner did not appear before this court as he

was directed to, instead he challenged the authority of this court for passing the orders as has been passed, before the Higher Forums. This court now awaits the order of the Hon'ble Apex Court as regards the propriety of the orders passed by this court on the basis of registration of the FIR against the petitioner by CBI.

Hence,

Ordered

The prayer for recalling of the orders dated December 24, 2020, 11.01.2021 and 18.02.2021 passed by this court in RC 22(A)/2020 are thus considered and disallowed for the reasons mentioned herein above.”

5. It is also pertinent to mention the factual aspect of the prosecution case at the outset. As ascertained from the FIR, the accused persons in the capacity of being the public servant of ECL including security personnel and accused No.6/petitioner herein with other unknown persons were parties to criminal conspiracy and in pursuance of such criminal conspiracy, they fraudulently and dishonestly misappropriated coal from the coal reserve of leasehold areas under the dominion of ECL by resorting to illegal mining and also from coal stock parked in the Railway sidings of ECL during the period between May 2020 till the date of filing of the FIR. The aforesaid case is commonly known as ‘coal scam case’ involving a sum of Rs.1340 crores approximately.

6. On 24th December, 2020, the Investigating Officer of the case filed an application stating, inter alia, that several notices under Section 41A was issued in the name of the petitioner during the period between 5th

December, 2020 and 21st December, 2020, but the accused did not appear before the Investigating Officer for interrogation. Therefore, the Investigating Officer prayed for issuance of non-bailable warrant of arrest against the petitioner and another accused to secure their appearance for the purpose of investigation.

7. It is submitted by Mr. Bikash Ranjan Bhattacharya, Senior Counsel on behalf of the petitioner that the Investigating Officer prayed for issuance of warrant of arrest against the accused/petitioner to secure his attendance for the purpose of investigation. Therefore, warrant of arrest was not issued for the purpose of securing attendance of the petitioner before the learned Special Judge, CBI Court at Asansol. Subsequently on 11th January, 2021 the learned Special Judge, CBI Court passed an order for issuance of proclamation against the petitioner. It is contended by Mr. Bhattacharya that order of proclamation issued by the learned Court below on 11th January, 2021 is bad in law because the said order dated 11nd January, 2021 was passed by the court below without considering non execution report of the warrant of arrest. It is further submitted by Mr. Bhattacharya that the Hon'ble Supreme Court passed the following order in Special Leave to Appeal (Crl) Nos.1620-1621 of 2021 on 25th March, 2021:-

“Conditional on the petitioner (Anup Majee) joining in the investigation before the Central Bureau of Investigation and cooperating in the investigation, we direct that he shall not be arrested until 6th April, 2021. This order has been passed

without the Court expressing any opinion on the merits of the rival contentions, as a pro-tem direction in view of the ensuing recess. This order shall not operate as a restraint on the investigation in the meantime. All the rights and contentions of the parties are kept open to be considered when the proceedings are taken up on 6th April, 2021.”

Subsequently the aforesaid order was extended by the Hon’ble Supreme Court.

8. In view of such circumstances the petitioner filed an application for recalling of the order dated 24th December, 2020 and the consequential order of proclamation dated 11th January, 2021 as well as the order of attachment dated 18th February, 2021. The trial court observed that it did not pass any order termed as illegal until and unless the Apex Court declares the very registration of FIR is without jurisdiction. The learned trial judge also held that the appearance of the accused petitioner on the basis of the order passed by the Apex Court does not in any way negates the orders passed by the trial court which were sought to be recalled by filing the impugned application. As the accused/petitioner did not appear before the court inspite of issuance of warrant of arrest and order of proclamation, instead he challenge the authority of the Court to pass the order dated 24th December, 2020, 11th January, 2021 and 18th February, 2021, before the higher forums, the learned trial judge refused to recall the said orders unless the orders were set aside by the trial court.

9. It is further argued by Mr. Bhattacharya that the petitioner appeared before the Investigating Officer as many as 19 times after the order of the Hon'ble Supreme Court was passed. In spite of his appearance in terms of the notice under Section 41A of the Cr.P.C, CBI has attached the house property of the petitioner situated at premises No.AA281, Salt Lake City, Sector-I. Bank Accounts of the petitioner, his wife and in the name of his business were also frozen. Due to attachment of house property, the petitioner is not able to stay in Salt Lake with his family members. The children of the petitioner are students of La Martiniere School, Kolkata. As the petitioner is unable to stay in Kolkata his children did not get any opportunity of continuing their studies. Due to attachment of bank accounts, the petitioner and his family members are suffering from financial hardship.

10. Thus, according to Mr. Bhattacharya when the petitioner has been cooperating with the CBI, the learned trial judge committed gross illegality in passing the impugned order dated 16th April, 2021 refusing to recall the order of warrant or arrest and also passing subsequent orders of proclamation and attachment passed by the learned court below.

11. Mr. Dhiraj Trivedi learned Assistant Solicitor General, on the other hand, submits that the CBI registered Case No.RC0102020A0022 on 27th November, 2020 under Section 120B/409 of the IPC and Section 13(2) read with Section 13(1)(a) of the Prevention of Corruption Act against some public servants and security personnel of ECL and the petitioner herein with unknown others on the allegation that in pursuance of criminal

conspiracy, the accused persons fraudulently and dishonestly misappropriated coal from the coal reserve on leasehold areas under the dominion of ECL by resorting to illegal mining and also from the coal stock parked in railway sidings of ECL from May, 2020 onwards. Series of notices under Section 41A Code of Criminal Procedure was issued directing the petitioner to meet the Investigating Officer for the purpose of investigation for interrogation. The petitioner did not meet the Investigating Officer in pursuance of the notices under Section 41A of the Code of Criminal Procedure. Lastly, on 24th December, 2020 on the prayer of the prosecution, the learned Special (CBI) Court issued warrant of arrest against the petitioner “to secure appearance for the purpose of investigation as they are evading appearance before the investigating agency to procrastinate ongoing investigation.” Subsequently, vide order dated 11th January, 2021 the trial court issued process of proclamation against the petitioner.

12. The petitioner filed WPA No.10457 of 2021 challenging the validity of initiation of FIR and institution of the cases on the ground that the state of West Bengal has withdrawn the consent required under Section 6 of the Delhi Special Police Establishment Act, 1946 by a notification dated 16th November, 2018. Applicability of the Delhi Special Police Establishment Act was also challenged on various other grounds which is not relevant for the purpose of this case. A Coordinate Bench in the writ Court disposed of the said writ petition vide order dated 3rd February, 2021 holding, inter alia, that the FIR was validly lodged and CBI was

authorized to continue its investigation in respect of the said FIR. Both the CBI and the petitioner, however challenged the above-mentioned order dated 3rd February, 2021 passed in WPA No.10457 of 2021 by filing two separate appeals being MAT No.158 of 2021 and MAT No.167 of 2021 before the Division Bench. Both the appeals were disposed of by the Division Bench vide order dated 12th February, 2021 with the following order :-

“for the reasons mentioned above, we find prima facie case is met out in favour of the appellant in MAT No.158 of 2021. Accordingly, the impugned order passed by the learned Single Judge shall remain stayed. CAN No.1 of 2021 in MAT No.158 of 2021 is allowed. Prayer for grant of interim relief in MAT No.167 of 2021 is rejected. The stay application bearing CAN 1 of 2021 in MAT 167 of 2021 is dismissed.”

13. The petitioner filed Special Leave to Appeal (Criminal) Nos.1620-1621 of 2021 before the Hon’ble Supreme Court. The Hon’ble Supreme Court passed a conditional order directing the petitioner to cooperate in the investigation and subject to such cooperation, it was directed that the petitioner shall not be arrested until 6th April, 2021. The aforesaid interim order was extended time to time.

14. Under such backdrop, it is submitted by Mr. Trivedi that in any of the proceedings before this Court and the Hon’ble Supreme Court, further proceeding of RC Case No.22(A) of 2020 was not stayed. The orders of issuance of warrant of arrest dated 24th December, 2020 passed by the

learned trial judge and subsequent order dated 11th January, 2021, whereby, the trial court issued process of proclamation and attachment were also not stayed by High Court.

15. Only after getting protection against arrest, the petitioner filed an application in the trial court for recalling of the orders dated 24th December, 2020 and issuing warrant of arrest against him and also the consequential order of proclamation dated 11th January, 2021 and order of attachment dated 18th February, 2021. The learned trial judge refused to recall the aforesaid orders on the ground that the appearance of the petitioner on the basis of the order passed by Hon'ble Supreme Court does not in any way negates the order passed by the trial court which are sought to be recalled by dint of this application. The aforesaid orders were passed on the facts and circumstances prevalent on the dates of passing the said orders. It is also noted by the learned trial judge that till 16th April, 2021 the petitioner did not appear before the trial court in spite repeated directions, instead he challenged the authority of the court for passing the orders dated 24th December, 2020, 11th January, 2021 and 18th February, 2021. According to Mr. Trivedi there is no illegality in the order and this Court should not interfere with the order.

16. He also invites this Court to consider that the alleged incident involves economic offence and scam of Rs.1340 crores approximately. It is further submitted by the learned Assistant Solicitor General that on the basis of the order passed by the trial court on 18th February, 2021, CBI freezed bank accounts of the petitioner and from the transactions of the

bank accounts by the petitioner, money trails of crores of rupees have been unearthed. Therefore, for the sake of investigation, the instant revision is required to be dismissed.

17. Chapter V of the Code of Criminal Procedure culls out detailed provisions of “**arrest of persons**”. Section 41 states the circumstances when police may arrest without warrant. Relevant portions of Section 41 is quoted below:

“41. When police may arrest without warrant.- (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

¹[(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

²[Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.]”

18. It is needless to say that necessity of arrest of a person is occasioned during investigation for ensuring his presence before the Investigating Officer. However, the Code mandates under Section 167 to produce any person arrested during investigation before the nearest Judicial Magistrate and on such production of the accused, the provision contained in sub Section (2), (2A), (3), (4), (5) and (6) of Section 167 shall apply. Therefore, initial submission made by Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel on behalf of the petitioner that warrant of arrest was issued for the purpose of ensuring attendance of the accused/petitioner before the Investigating Officer and he was not liable to be produced in the trial court is misconceived and cannot be entertained.

19. Section 41A of the Code of Criminal Procedure is inserted in the Code by the Code of Criminal Procedure (Amendment) Act, 2008 with effect from 1st November, 2010. Section 41A runs thus:

“41A. Notice of appearance before police officer.--

(1) ²[The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

³[(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

20. In **Arnesh Kumar vs. State of Bihar** reported in **(2014) 8 SCC 273** it is laid down by the Hon’ble Supreme Court that in all cases where arrest of a person is not required under Section 41(1) Cr.P.C, police officer is required to issue notice directing the accused to appear before him at a specified place and time. The law obliges such an accused to appear before police officer and it further mandates that if such an accused complies with terms of notice, he shall not be arrested, unless for reasons to be recorded, police officer is of the opinion that the arrest is necessary.

At this stage also, condition precedent for arrest as envisaged under Section 41 Cr.P.C has to be complied and shall be subject to same scrutiny by the Magistrate as aforesaid. If the provisions of Section 41 Cr.P.C which authorises police officer to arrest an accused without an order from a Magistrate and without warrant are scrupulously enforced, the wrong committed by police officers intentionally or unwittingly would be reversed and number of cases which come to the Court for grant of anticipatory bail will substantially be reduced. Practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.P.C for effecting arrest is discouraged and discontinued. This is the precise reason that obligates the police officer to issue notice under Section 41A of the Code of Criminal Procedure to the petitioner.

21. As the petitioner failed to appear before the Investigating Officer for compliance of notice under Section 41A of the Code of Criminal Procedure, the learned trial judge issued warrant of arrest vide order dated 24th December, 2020 so that the petitioner might be produced under arrest for the purpose of investigation. Looking to the nature of crime of and the conduct of the accused, the learned trial judge found it necessary that immediate arrest of the petitioner was needed.

22. Chapter VI, Part B of the Code of Criminal Procedure contained detailed provision relating to: “**warrant of arrest**”. Under this chapter, a court can issue a warrant in exercise of power thereunder but such warrant can only be issued for appearance before the court only and not before the police. Thus it will not be correct to say that warrant of arrest

was issued for production of the petitioner before the police in aid of investigation. The ratio laid down in the **State vs. Dawood Ibharim Kaskar & Ors.** reported in **(2000) 10 SCC 438** squarely applies in support of my observation. On this score also, the order passed by the learned Special (CBI) Judge at Asansol directing issuance of warrant of arrest cannot be called in question.

23. Section 82 of the Code of Criminal Procedure empowers the court for issuing proclamation against a person absconding. The provisions contained in Section 82 of the Code are enacted to secure the presence of the accused. Once the said purpose is achieved, the order of proclamation shall be withdrawn. Similar is the provisions contained in Section 83 relating to attachment of property of person absconding. On the appearance of the accused before the court who has issued the order of proclamation under Section 82 and attachment subsequently under Section 83 of the Code, surrenders before the court and the standing warrants are cancelled, he is no longer an absconder. The purpose of attaching the property comes to an end. It is to be released subject to the provisions of the Code securing the attendance of an absconding accused, is a matter between the State and the accused.

24. In the instant case, it is not in dispute that the accused has not surrendered before the trial court as yet. As the CBI failed to execute warrant of arrest, the learned trial judge issued the order of proclamation and subsequently order of attachment of property of the accused/petitioner.

25. Such order can only be recalled by the trial court who issued the order of proclamation and attachment on the petitioner's surrender before it because on his surrender, the force of the order of proclamation and attachment will automatically cease to operate. The decision of the Hon'ble Supreme Court in **Vimalaben vs. Vatslaben** reported in **(2008) 4 SCC 649** may be relied on in this regard.

26. Thus, this Court concludes that on petitioner's surrender before the trial court the order of proclamation and attachment issued by the learned Judge in the trial court under Section 82 and 83 of the Code may be recalled by the issuing court. The revisional court has no jurisdiction to set aside the impugned orders passed by the trial court on the ground of illegality or material irregularity.

27. It is submitted by Mr. Trivedi, learned Assistant Solicitor General that the Investigating Agency attached some bank accounts of the petitioner and his wife on the strength of an order of attachment passed by the court below under Section 83 of the Code of Criminal Procedure. On examination of the said bank accounts during investigation, serious incriminating materials have been recovered in support of the prosecution case regarding huge amount of money-trail to different persons and accounts. Therefore, the bank accounts of the petitioner and his wife were freezed. If at this stage the order of attachment is set aside, and the bank accounts of the petitioner and his wife are defreezed, prosecution will not be in a position to prove its case regarding coal block scam amounting to Rs.1349 crores approximately.

28. The above issue does not fall for consideration of this Court in the instant revision. Whether any bank account attached and freezed under the provision of Section 83 can be converted to seizure and attachment of property under Section 102 of the Cr.P.C, is to be decided by the trial court on such prayed being made by the accused. Therefore, this Court, at this stage cannot entertain such issue in the instant revision.

29. For the reasons stated above, I do not fine any merit in the instant revision and the revision is dismissed on contest, however without any costs.

(Bibek Chaudhuri, J.)