

Form J(1)

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

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

CRR 3793 of 2022

**Bhagawani Devi Mundra
Vs.
The State of West Bengal & Ors.**

Mr. Chandi Charan Roy
..for the petitioner

Mr. Sandip Chakraborty
...for the State

Item No. 26

Heard & Judgment on: 13.12.2022

Bibek Chaudhuri, J.

Having heard the learned advocate for the petitioner and on perusal of the averment made in the instant revision, this Court is of the view that the instant revision can be disposed of here and now

with the assistance of the learned P.P.-in-charge on behalf of the State.

Mr. Sandip Chakraborty, learned advocate is requested to assist this Court on behalf of the State of West Bengal which he agreed. A copy of the revisional application has been served upon Mr. Chakraborty.

Appointment of Mr. Chakraborty be regularized by the learned Legal Remembrancer, Government of West Bengal.

Grievance of the petitioner is that the petitioner has been arrayed in C.S. 23083 of 2015 under Section 138 read with Section 141 of the Negotiable Instruments Act as accused No.3. In the trial Court the aforesaid criminal case was fixed for argument on 16th September, 2022. On that case the accused No.3 was duly represented by his learned advocate by filing an application under Section 317 of the Code of Criminal Procedure. However, the learned Magistrate refused to entertain the application under Section 317 of the Code of Criminal Procedure and issued warrant of arrest against accused No.3.

Section 317 of the Code of Criminal Procedure contains provision for inquiries and trial being held in the absence of accused in certain cases. The provision runs thus:-

"317. Provision for inquiries and trial being held in the absence of accused in certain cases – (1) At any stage of an inquiry or trial under his Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately."

The impugned order dated 16th September, 2022 does not contain any reason subscribed by the learned Magistrate containing, inter alia, that personal attendance of the accused before the Court was absolutely necessary at the time of hearing argument. Without such satisfaction an application under Section 317 of the Code of Criminal Procedure cannot be rejected. If where an accused is represented by his pleader under Section 317 of the Code of Criminal

Procedure and if the learned Magistrate considers his personal attendance necessary he may either adjourn such inquiry or trial or order that case of such accused be taken up or tried separately. He does not have any right to issue warrant of arrest against the accused. Moreover, it is found that the impugned order is palpably illegal. In view of the fact that previous bail of the accused was not cancelled, bail bond was not directed to be forfeited but warrant of arrest was issued against her.

Considering such aspect of the matter, I am inclined to set aside the order dated 16th September, 2022.

Accordingly, the instant revision is **allowed** on contest. The impugned order dated 16th September, 2022 is set aside.

The learned Magistrate is directed to permit the petitioner to remain on same bail as the previous bail was not cancelled and recall warrant of arrest issued against her forthwith.

The parties are at liberty to act on the server copy of this order.

(Bibek Chaudhuri, J.)