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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Order pronounced on 15.07.2022*

+ CRL.M.C. 368/2022

RAJPAL

..... Petitioner

Through: Mr. Manoranjan Kumar, Mr. Ujwal
Ghai, Advocates.

versus

STATE NCT OF DELHI THROUGH STANDING COUNSEL
CRIMINAL & ANR.

..... Respondent

Through: Ms. Meenakshi Chauhan, APP for
State.
Ms. Nidhi Nawal and Ms. Rupal
Yadav, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The petitioner has filed the present petition under Section 482 Cr.P.C. for setting aside the order dated 03.12.2021 passed by the learned District and Session Judge, Dwarka dismissing the Criminal Revision No. 134/2021, which was filed by the present petitioner.

1.1 In the said petition before learned District and Sessions Judge, the present petitioner had challenged the order dated 04.09.2021, 09.09.2021, 14.09.2021 and 20.09.2021 passed by the learned MM, Dwarka in case FIR No. 311/2021, PS Baba Haridas Nagar, Dwarka under Section 760/328/307/420/506/34 IPC. By first three orders, the Trial Court had ordered issuance of warrants against the petitioner to procure his presence before it and vide order dated 20.09.2021, proceedings under Section 82



Cr.P.C. were commenced. The learned District & Sessions Judge vide order dated 03.12.2021 has dismissed the revision petition No. 134/2021 and the above orders passed by the learned MM were upheld.

1.2 The case of the prosecution in brief is that as per the prosecutrix on 02.04.2021, she was called by the main accused in this case Mr. Sunil Kumar, in his clinic for giving her payment. When she arrived there, she was given some intoxicating substance in cold drink and thereafter she fell unconscious. At around 11 p.m. she regained consciousness and she was told by Sunil Kumar and the present petitioner that they had committed rape on her and they had also made a video of her and if she would make hue and cry, then they would circulate the said video. Moreover, she was allegedly thrashed and injuries were caused on her person.

1.3 As per the petitioner, on 05.07.2021, that is almost after two months of the incident, the complainant had given a false and frivolous complaint to the police on which FIR No. 311/2021, under Sections 376D/328/307/420/506/34IPC came to be registered at Baba Haridas Nagar, Dwarka. It is further stated that the main accused has already given a police complaint against the complainant for extortion and other related offences as the complainant threatened to implicate him in a false complaint, in case her demands were not met. The present petitioner was just a casual friend of the main accused; he had never seen the complainant nor knew her and she cannot even identify him. The petitioner is a police official and he was stated to be on his duty at the date and time of the incident and his presence at the place of incident is highly improbable. So, he is falsely implicated in the present case.

1.4 In the order dated 06.07.2021, the learned Magistrate noticed that one



more accused, namely, Shivam was required to be arrested along with the petitioner in this Case. However, Shivam was not arrested. Statement of victim was recorded under Section 164 Cr.P.C. on 13.07.2021, in which she had mentioned the name of Shivam apart from the petitioner and main accused. The CDR details and mobile location towers of the Petitioner could easily prove that he was falsely implicated in this case and at the time of incidence he was not there.

1.5 On 03.09.2021, the charge-sheet against the main accused was filed and further investigation was stated to be going on against the present petitioner. During the course of investigation, nothing substantial was found against the petitioner which could result into his immediate arrest. On 04.09.2021, the learned Magistrate took cognizance of the charge-sheet against the main accused and the petitioner but no cognizance was taken against Shivam. Non-bailable warrants were issued against the present petitioner straight away without issuing notice and summons against the petitioner.

1.6 As per petitioner, the said act of the learned MM is against the rule of natural law as well as the judicial precedents. The court should not compel arrest of the accused if he was not arrested by the IO in the present case; the issuance of NBW was against the rule and spirit of section 87 of the Cr.P.C. and the said order passed by the Trial Court is perverse and bad in the eyes of law.

1.7 It has been further submitted that on 07.09.2021, the counsel for the petitioner had moved an application for recalling and staying the warrant dated 04.09.2021 along with personal exemption application. The learned MM did not recall the NBW but only stayed it for two days. One more



application was filed on behalf of the petitioner under Section 91 Cr.P.C. for preservation of the CDRs. The copy of the FIR was also provided for the first time to the counsel for accused. On 08.09.2021, the petitioner had moved an application before the learned District and Session Judge seeking anticipatory bail, which was listed for 09.09.2021. The said application was dismissed on the same day by learned ASJ (02). On the same date, learned MM directed the NBW to be executed through DCP concerned against the petitioner. Counsel for the petitioner applied for certified copies of the records on 09.09.2021 and the records were provided to him on 10.09.2021.

1.8 On 14.09.2021, the counsel for the petitioner was present before Court but learned MM again ordered for execution of warrants through concerned Commissioner of Police. On 17.09.2021, the petitioner had preferred a revision petition before learned District and Session Judge, Dwarka and the date of hearing was given on 21.09.2021. The petitioner had also preferred an anticipatory bail application before High Court, in which the date of hearing was fixed for 21.09.2021.

1.9 On 20.09.2021, the learned Trial Court issued process under Section 82 Cr.P.C. and application of the petitioner for recalling of warrants was dismissed. On 21.09.2021, High Court issued notice in the bail application moved by the petitioner and the learned District and Session Judge, Dwarka stayed the operation of coercive orders on the same date till the next date of hearing, i.e., 23.10.2021. The application for bail before High Court was dismissed as withdrawn. Interim protection granted in the Criminal Revision No. 134/2021 was extended till 28.10.2021 by the court of learned District and Session Judge, Dwarka, Delhi.

1.10 On 28.10.2021, the interim protection granted in the Criminal



Revision Petition No. 134/2021 was withdrawn by learned District and Session Judge, Dwarka. On 08.11.2021, the petitioner again moved an application before learned District and Session Judge, Dwarka for grant of interim protection afresh till the next date of hearing. On 09.11.2021, the case was committed to the Session Court as the supplementary charge-sheet in the matter was filed against the main accused and present petitioner was declared as an Absconder as per Section 82 Cr.P.C. On 10.11.2021. The learned District and Sessions Judge dismissed the application for fresh interim protection with a cost of Rs. 10,000/-

1.11 On 03.12.2021, the Criminal Revision Petition was dismissed by learned District and Sessions Judge. The matter was fixed for framing of charge on 14.12.2021 and the same was adjourned to 19.01.2022.

1.12 Being aggrieved by the order dated 03.12.2021 of learned District and Sessions Judge and earlier orders of the learned MM, the petitioner has preferred the present petition on the grounds that the petitioner was never called by the IO or the police in this case, therefore he was unaware about the developments which were taking place in this case; the petitioner was on his duty at the date of incidence and the technical records have verified the said fact; the Trial Court should have issued summons/notice at the first instance against the petitioner instead of NBW and order of cognizance is bad; the petitioner was not evading arrest or appearance before the Trial Court, rather he was never asked to join investigation, so NBW cannot be issued against him; the Court should not have asked the police to arrest the accused if he was not arrested at the stage of investigation by the IO and the impugned order is passed on conjecture and surmises.

2. Notice was issued. Status Report has been filed. It has been submitted



in the Status Report that the accused Sunil had taken a loan of Rs. 6.7 lacs from the prosecutrix. When the prosecutrix was alone in her house in January, 2021, Sunil forcibly made physical relation with her and thereafter on 02.04.2021, Sunil called the prosecutrix to his clinic at Charkhi Dadri, Haryana on the pretext of returning the money. Sunil told the complainant that Rajpal (petitioner) was coming with money and after half an hour, the present petitioner arrived there; they offered cold drink to prosecutrix; after having cold drink, she lost her consciousness and at about 11 p.m., when she regained her consciousness, she found herself in naked condition and both Sunil and the petitioner were present there and they told the complainant that they had done wrong act with her and they had also made a video of the same and in case she disclosed the incident, they would viral the said video. The present petitioner is also alleged to have threatened the complainant that he was posted at SP office, so she could not do anything against them and thereafter they threw her from first floor and when she regained her consciousness, she found herself admitted in Oscar Hospital, Dadri. One person, namely Shivam was keeping a watch regularly on her and hence she lodged a complaint later on and present case FIR no. 311/2021 dated 05.07.2021 under Sections 376D/328/307/420/506/34 IPC was accordingly registered.

2.1 The victim was medically examined and her statement under Section 164 Cr.P.C. was recorded in which she has corroborated her version given in the FIR. Accused Sunil was arrested on 05.07.2021, who was granted regular bail on 19.01.2022 by the learned ASJ. It has been further submitted that during the course of investigation, CDR and Location Chart of the mobile number of the victim and accused was prepared and after completion



of investigation, charge-sheet was filed and later on supplementary charge-sheet was also filed.

2.2 Learned MM took cognizance against accused Sunil as well as the present petitioner Rajpal after considering the fact that there were specific allegations against Rajpal in the statement of prosecution under Section 164 Cr.P.C, corroborated by her MLC. The complainant has levelled allegations against Sunil and the present petitioner with respect to the alleged incident of gang rape and attempt to murder. Learned MM, after considering the gravity of the crime, the facts of the case and the fact that the present accused being a police official, issued warrants against the present accused in terms of Section 204 (1) (b) Cr.P.C., returnable on 07.09.2021. On this date, the counsel for the petitioner appeared and filed his *vakalatnama* and also filed an application for staying of warrant along with an exemption application. The warrants were stayed till the next of hearing, subject to the condition that the accused shall appear and surrender on the date fixed.

2.3 On 09.09.2021, anticipatory bail moved by the petitioner was dismissed. Some time was sought by the counsel for the petitioner to produce him before court, however, learned MM issued non-bailable warrants against accused to be executed through the DCP concerned and the matter was adjourned for 14.09.2021. On 14.09.2021, it was noted that NBW issued even through the DCP/SP remained unexecuted and fresh warrants were issued against the petitioner through the concerned Commissioner of Police returnable for 20.09.2021. However, on 20.09.2021, the said warrants also remained unexecuted even through the IG concerned. Hence, the learned MM initiated process under Section 82 Cr.P.C. against the present petitioner, returnable for 25.10.2021.



2.4 The revision petition filed by the present petitioner before the court of learned District and Sessions Judge, Dwarka, was taken up on 21.09.2021. It was directed that execution of NBWs and the proceedings under Section 82 Cr.P.C. be kept in abeyance subject to petitioner entering appearance before the learned Trial Court on or prior to the date fixed and he may move an application for bail and the same was directed to be considered and disposed of on the same day and the criminal revision petition was adjourned to 23.10.2021.

2.5 The anticipatory bail application moved before High Court was dismissed as withdrawn on 05.10.2021. On 25.10.2021, the learned MM noted about the extension of the interim order of the learned District and Sessions Judge till 28.10.2021 and also noted about the non-compliance of the earlier order. Interim protection was withdrawn by learned District and Sessions Judge on 28.10.2021 and the matter was adjourned to 03.12.2021.

2.6 On 01.11.2021, the learned MM noted withdrawal of the interim protection of petitioner and kept the matter for recording the statement of process server on 09.11.2021. On 09.11.2021, the statement of process server was recorded by learned MM and the present petitioner was declared as Proclaimed Absconder and Ld. Magistrate also committed the case to the learned Principal and Sessions Judge, South-West, Dwarka for 12.11.2021.

2.7 In the Status Report, it has been further mentioned that on 10.11.2021, a fresh application seeking interim protection was moved before the learned Principal District and Sessions Judge, Dwarka, which was dismissed with costs of Rs. 10,000/-. The main revision petition was dismissed by learned Principal District and Sessions Judge on 03.12.2021. Hence, the petitioner has challenged the same by filing the present petition.



2.8 Charges under Section 376 IPC, 328/34 IPC, 376D IPC, 506/34 IPC and 307/34 IPC were framed against co-accused Sunil on 14.12.2021 and case was listed for prosecution evidence on 21.04.2022. The prosecution has opposed the present petition as all the contentions raised by the petitioner have already been countered by the learned Principal District and Sessions Judge, Dwarka and there is no illegality in the orders passed by the learned MM and learned Principal District and Sessions Judge; therefore the present petition may be dismissed.

3. Written synopsis were submitted by the present petitioner on the same lines. Arguments heard.

4. Petitioner has relied upon the following judgments:-

- “1. *Court on its own motion vs. State Crl.Ref. No. 4/2017*
2. *Siddarth vs. State of Uttar Pradesh (2022) 1 SCC 676*
3. *Aman Preet Singh vs. CBI through Director AIR 2021 SC 4154*
4. *Court on its own motion vs. State 2004(1) JCC 308*
5. *Inder Mohan Goswami and Anr. Vs. State of Uttranchal and Ors. AIR 208 SC 251*
6. *Mani Shandley and Ors. vs. State and Ors. AIR 2008 (102) DRJ 1578*
7. *G. Sagar Suri v. State & Ors. 2003 (3) JCC 1387*

Every judgment is passed on the peculiar facts of the case. I have gone through these judgments. My considered view is as under:-

5. The Magistrate has power to issue process under Section 204 of the Code of Criminal Procedure, 1973. The relevant portion of the said section is reproduced hereunder:-

“ **204-Issue of Process—**(1) *If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be ---*



- (a) *a summon- case, he shall issue his summons for the attendance of the accused, or*
- (b) *a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accusewd to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.”*

6. In the present case the FIR was under Section 376D/328/307/420/506/34 IPC. In Section 376D the punishment is rigorous imprisonment of not less than 20 years but which may extend to life, which shall mean imprisonment for the remainder of that person's natural life, and with fine. It is a heinous offence and in my view the Magistrate has a right to issue warrant in this case. As far as the taking of cognizance is concerned, the Magistrate is not barred from issuing process against persons other than those mentioned in the charge-sheet. The Magistrate, when he issues process to a person, who has neither been put in coloum 11 and 12 of the charge-sheet, does exercise his authority/jurisdiction provided he finds that there is sufficient material on record and a prima facie case made out against him. When a Magistrate takes cognizance and issues process against person, who has not been brought before him, he exercises his power under Section 204 and not under Section 319 Cr.P.C.

6.1 In my view, the persons who have not been joined in the charge-sheet as accused, even against them, process can be issued at the stage of taking cognizance, provided there is a sufficient material in the police record showing their involvement.

6.2 Now, let us consider the facts of the present case in view of the above



stated legal position. Charge-sheet was filed and taken on record on 03.09.2021, the following order was passed on the said date:-

“03.09.2021

Fresh chargesheet received by way of assignment. It be checked and registered as per rules.

*Present: Ms. Aradhana Pandit, Ld. Substitute APP for the State
IO SI Anita.*

- 1. File taken up through video-conferencing, from court chamber, in terms of order dated 19.08.2021 bearing no. 569/RG/DIIC/2021 of the Hon'ble High Court, issued in wake of COVID-19 pandemic.*
- 2. Heard. Record perused. The present charge-sheet has been filed against accused Sunil for commission of offences under sections 376D, 328, 307, 420, 506, 34 IPC.*
- 3. The allegations in the written complaint of the prosecutrix are that she met the accused Sunil in the year 2019, while working in a company. Their friendship grew over time and accused Sunil requested her to loan him some money. The same was done. In January 2021, it is alleged that Sunil came to the house of the prosecutrix and forcibly raped her. Thereafter, on 02.04.2021, the accused Sunil called the prosecutrix to his clinic in Charkhi Dadri by luring her with promise to repay her money.*
- 4. It is alleged that Rajpal, who is a friend of the accused, came to the spot after some time and gave her a cold drink. After drinking the same, the prosecutrix lost consciousness. When she regained the same, she found that she was on the terrace of the clinic disrobed. Sunil and Rajpal were also there. They started beating her and both of them showed her a video wherein she was being raped by them. Thereafter, she was thrown off the first floor. There are allegations that when Sunil came to meet her in the Hospital, Rajpal had threatened her over a call and told her*



that he works in S.P. office. As per MLC, the victim has suffered grievous injuries.

5. *While accused Sunil was arrested straightaway, the IO has stated that she has applied for CDR, locations of Rajpal, etc. and action will be taken against him in future.*

6. *On a specific query as to why action has not been taken against Rajpal, who is admittedly a police official, the IO has stated that she had oral directions from the higher officers that action against him be taken only after collecting CDRs etc. Further, on a query being put to the IO that whether any CDR qua accused Sunil was collected before arresting him, the IO has answered in negative.*

7. *Surprisingly, the IO has neither kept Rajpal on Column No. 11 nor in Column No. 12, despite categorical allegations against him in the police complaint of the prosecutrix, statement under Section 164 CrPC, MLC etc.*

8. *Accordingly, ACP Sh. Joginder Singh Joon, who has forwarded the present chargesheet, to appear in person on the next date of hearing and explain the above circumstances.*

9. *It is clarified that no exemption from appearance will be allowed.*

10. *Re-list for consideration on 04.09.2021.*

11. *Copy of this order be immediately transmitted to ACP concerned for compliance.”*

6.3 In furtherance to the order dated 03.09.2021, next order was passed on 04.09.2021, taking cognizance of the offence under Section 376D/328/307/420/506/34 IPC as under:

“Undersigned is also working as Link MM today.



*Present: Ld. Substitute APP for the State.
ACP Sh. Joginder Singh Joon alongwith IO SI Anita.
Complainant alongwith counsel.
Sh. Vikas Yadav, Ld. Counsel for the complainant.
Sh. Ankit Gupta, Id. Counsel for accused Sunil.*

- 1. Heard.*
- 2. Today the matter was listed for consideration on the point of cognizance.*
- 3. I have gone through the charge-sheet and annexed documents.*
- 4. I take cognizance of the offence under Sections 376D/328/307/420/506/34 of Indian Penal Code, 1860*
- 5. Once cognizance of the offence is taken, the task before this court is to identify the persons against whom there is sufficient material on record to proceed further. The investigating agency has filed a chargesheet against accused Sunil only, who is stated to be in JC.*
- 6. In so far as Rajpal is concerned, the ACP concerned has submitted that Rajpal, who has been named by the complainant in the police complaint, has not been joined in the investigation till date. The IO has admitted that no notice has been sent to the said person for joining the investigation. On a specific query as to why attempts have not been made to join the said person in the investigation, the ACP concerned states that once the CDR details of the said person are available, he will be joined in the investigation. Ld. Counsel for the complainant, who has appeared in Misc. application for calling the status report, has lodged his protest by contending that the complainant is constantly receiving threats from Rajpal and the IO is only trying to shield the accused as he is a police official, for reasons best known to him.*



As observed in order dated 03.09.2021, there are specific allegations against Rajpal on the police complaint, Section 164 CrPC statement and MLC etc. The complainant has leveled specific allegations against Sunil and Rajpal, with respect to the alleged incident of gang rape and attempt to murder. Therefore, on consideration of the material available on record, prima facie sufficient grounds are made out to proceed further against accused Rajpal on the present case.

8. *The law with respect to cognizance is well settled. In this regard, the Hon'ble Apex Court in Dharampal Vs. State of Haryana (2014) SCC 306 has observed inter alia as under:*

“35. In our view, the Magistrate has a role to play while committing the case to the court of session upon taking cognizance of a police report submitted before him under Section 173(2) CrPC. In the event the magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused.”

The Hon'ble Apex Court thus held that the Magistrate has ample powers to proceed against persons dehors the police report.

9. *Keeping in view the severity of the crime, the facts of the case, and the fact that accused is a police official, in terms of Section 201(1)(b) CrPC, this Court deems it appropriate to issue warrants against accused Rajpal for his appearance before this Court. The warrants shall be executed by the ACP concerned.*

10. *Re-list for appearance of accused Sunil Kumar and Rajpal on 07.09.2020.*

11. *Copy of this order be given dasti to the IO and ACP concerned.*

12. *Since the grievance of the complainant in the misc.*



application has been addressed, the same stands disposed of.”

6.4 It is clear that although charge-sheet was filed against the co-accused Sunil but there were specific allegations against the present petitioner, namely, Rajpal and the same have been detailed in the complaint given to the police by the prosecutrix. The said complaint is the basis of registration of FIR in the present case. On 03.09.2021, the reason given by the IO for taking no action against the present petitioner, was that she had received oral directions from the higher officials to the effect that action against Rajpal would be taken only after collecting CDRs etc., but when it was enquired whether any CDR was collected before taking action against the accused Sunil, the answer was in negative. The learned Metropolitan Magistrate has noted that strangely accused Rajpal was neither kept in coloum 11 nor in 12, despite there being specific allegations against him. The statement of prosecutrix recorded under Section 164 Cr.P.C. and narration noted by the doctor in MLC of the victim also supported the version, so the ACP was summoned to Court on the next date.

6.5 Cognizance was taken on 04.09.2021 and learned Metropolitan Magistrate recorded that next step is to identify the persons against whom there is sufficient material on record to proceed further. It has been submitted by the ACP before learned M.M. that no notice was sent to Rajpal for joining the investigation. The reason given for the said act was that his CDRs were required and he would be asked to join the investigation only thereafter.

6.6 Learned counsel for the complainant had stated that the complainant was receiving threats from Rajpal and he was being shielded as he was a



police official. The learned Metropolitan Magistrate observed that there were specific allegations against Rajpal, as the complainant had made detailed allegations against both the accused with respect to the alleged incident of gang rape and attempt to murder. So, learned Metropolitan Magistrate, after considering the material available on record, came to a specific finding that there was prima facie sufficient material on record to proceed further against the accused Rajpal in the said case.

7. Now, as far as issuing the warrants at first instance is concerned, the learned Metropolitan Magistrate has considered two facts; the first being the severity of the crime as detailed in the facts of the case and secondly the fact that the accused is a police official, so the Magistrate exercised his power under Section 204(1) (b) Cr.P.C. and issued warrants against Rajpal for compelling his appearance before Court. The matter was adjourned to 07.09.2021.

7.1 On the adjourned date, it was noted that warrants issued against Rajpal remained unexecuted. A Vakalatnama was filed by the learned counsel appearing on behalf of Rajpal. An application was moved for staying the warrants alongwith an application for exemption from personal hearing. The learned Metropolitan Magistrate, after considering these two applications, stayed the warrants till the next date of hearing, subject to the condition that accused shall appear and surrender on the date fixed. It is to be noted that co-accused Sunil was in custody since long and he was being produced from Jail throughout. A copy of the FIR was supplied to learned counsel for accused Rajpal and IO was also directed to keep a set of the charge-sheet ready for accused Rajpal, who was supposed to appear on the next date of hearing. The matter was adjourned to 09.09.2021.



7.2 In the meantime, the petitioner had also moved an application for anticipatory bail, which was taken up by learned Addl. Sessions Judge (ASJ) on 09.09.2021. The anticipatory bail application was dismissed. The Magistrate noted in his order that the anticipatory bail of the accused was dismissed. Learned counsel for accused Rajpal sought some time to produce the accused and his medical certificate was placed on record showing that he was advised rest from 27.08.2021 till 10.09.2021. The request was not allowed and NBWs were again issued against the accused. The matter was ordered to be listed on 14.09.2021. Again the NBWs remained unexecuted. It was stated that accused was not visiting his house for the last two months and he was not attending his duties at the SP Office, Charkhi Dadri. After 21.08.2021, he had last visited the clinic, where he was stated to be under treatment, on 11.09.2021 and as per IO he was evading his arrest deliberately. The warrants were again issued on 20.09.2021, the same were again received back unexecuted even when the same were ordered to be executed through the I.G. concerned. Another application was moved by the counsel for the appellant/accused Rajpal for staying of NBWs and for examination of question of jurisdiction of the Court. After some argument, the issue of jurisdiction was not pressed at that stage. The application was dismissed observing the conduct of the accused and process under Section 82 Cr.P.C. was issued.

8. The matter was re-listed on 25.10.2021. A revision petition filed by the present petitioner was taken up for hearing before the learned District Judge on 21.09.2021. Notice was issued in the said petition and in the meantime, execution of NBWs and proceedings under Section 82 Cr.P.C. were kept in abeyance, subject to petitioner entering appearance in Trial



Court on or before the date fixed. It was further noted that on appearance, if the petitioner moves an application for bail, the same shall be considered and disposed of on the same date and the matter was adjourned to 23.10.2021. In the meantime, the bail application moved by the petitioner before the High Court was dismissed as withdrawn on 05.10.2021.

9. Learned Metropolitan Magistrate took up the matter on 25.10.2021. The process issued under Section 82 Cr.P.C. was received back duly executed. Learned counsel for the accused Rajpal filed the copy of the order dated 21.09.2021 passed by the learned District and Sessions Judge, whereby the proceedings were kept in abeyance, subject to accused Rajpal entering appearance before this Court. An application was moved by the learned counsel for the accused under Section 207 Cr. P.C. for supply of copy of CDR of accused Rajpal. The accused did not appear and it was submitted that he would appear only after the supplementary charge-sheet supplied to him. Learned Metropolitan Magistrate noted that accused had not complied with the order dated 27.09.2021 passed by learned Principal District & Sessions Judge, however, no adverse order was passed against the accused. The matter was ordered to be re-listed on 01.11.2021.

10. On 28.10.2021, the learned Principal District and Sessions Judge withdrew the interim protection granted to the accused as he had not appeared before the Trial Court on or prior to the date fixed. On 01.11.2021 notice was issued to the process served to appear in Court and the matter was ordered to be re-listed on 09.11.2021. The statement of process server was recorded on 09.11.2021, who had executed the process under Section 82 Cr.P.C. and a reasoned order was passed declaring the present accused as Proclaimed Absconder. The matter was committed to the Sessions Court as



far as the accused Sunil was concerned. Fresh application was moved seeking interim protection, which was taken up by learned District and Sessions Judge on 10.11.2021, however, the same was dismissed with cost of Rs.10,000/-. The revision petition was dismissed on 03.12.2021. The learned Sessions Judge has relied upon the powers of the Court as envisaged in Section 87(a) of Cr.P.C. which is reproduced hereunder:-

“87. Issue of warrant in lieu of, or in addition to, summons:-
A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest-
(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons.”

11. The learned Sessions Judge has passed the order on the premise that even in a case where at the first instance, a summon has to be issued and if the Court has reasons to believe that the petitioner is an Absconder or he will not obey the summons then the warrants can be issued at the first instance. Section 87(a) has to be read alongwith Section 204 of Cr.P.C.. Admittedly, the case in hand is not a Summons case. This is a Warrant case, where the Magistrate has a power to issue a Warrant and the power to issue summons is a substitute power because Section 204 (1) (b) starts with “ A Warrant case-, he may issue a warrant, or, if he thinks fit, a summons”. The power is not reverse, which is the case as far as Section 87 Cr.P.C. is concerned, where in a Summons Case, in appropriate cases, Warrants can be issued in appropriate cases. .

12. Looking at this case from both the angles, i.e., Section 87 Cr.P.C. and



Section 204(1)(b) Cr.P.C., in my view, there were sufficient grounds existed before the Ld. Magistrate to issue Warrants in the first instance, this being a case of gang rape and accused being a police official.

13. Learned counsel for the petitioner has relied upon certain judgments. The first judgment is ***Court on its own motion vs. CBI, 2004 Law Suit (Del) 57***. This was a case where the Court has suo moto taken cognizance and has held that it is not necessary that at the time of filing of the charge-sheet the accused should be arrested and brought before Court. It was further held that if the Magistrate exercise the discretion of issuing warrants at any stage, including the stage while taking cognizance of the charge-sheet, he shall have to record the reasons in writing. In the present case learned Metropolitan Magistrate had recorded the reasons in detail as to why the warrants have been issued at the first instance and there is compliance of the directions issued in this judgment.

14. Learned counsel for the accused has relied upon another judgement of this Court in ***Court on its own motion vs. State, Crl. Ref. 4/2017*** in which order was passed on 27.10.2017. In this case also a reference regarding whether the learned Metropolitan Magistrate can examine the discretion exercised by the Investigating Officer by arresting or non-arresting the accused while considering the charge-sheet at the stage of taking cognizance. This is not a case where the learned Metropolitan Magistrate has examined the discretion by the Investigating Officer for arrest or not arresting the accused. It is the admitted case that accused Rajpal was neither shown in column No. 11 nor 12 of the charge-sheet and the cognizance of the offence was taken by the learned Metropolitan Magistrate when the charge-sheet was presented before him only against accused Sunil and



thereafter he issued warrants against Rajpal as sufficient material was present on record, so the ratio of this judgment does not apply to the present case.

15. The third judgment relied upon by the learned counsel for the appellant is in the matter of *Sidharth vs. State of Uttar Pradesh & Ors.*, **Manu/SC/0600/2021**. Here also, the Hon'ble Supreme Court was examining the requirement of arrest at the time of filing of charge-sheet. In that case the appellant had joined the investigation. The investigation was complete and he was roped in after seven years of registration of FIR and the Hon'ble Supreme Court found that there was no reason that he may be arrested before the charge-sheet is taken on record. The facts of the present case are quite different; the cognizance was taken regarding the grievous offences and on the basis of material available on record, the learned Metropolitan Magistrate had issued warrants against the present accused and the Ld. Magistrate has powers to do so. It has been rightly held by the Supreme Court that there is no pre-requisite to formality arrest the accused to take charge-sheet on record.

16. The next judgment relied upon by the learned counsel for the accused is *Aman Preet Singh vs. CBI through Director* AIR 2021 SC 4154. In the said case, the appellant was granted protection in plea seeking anticipatory bail. He had joined the investigation but the said Court noted that the accused persons have been charge-sheeted in economic offences, issued NBWs and when the appellant sought to enter virtual appearance, request was declined on the ground that he was not physically present. The Hon'ble Supreme Court observed that the Court was empowered to take cognizance after accepting the charge-sheet. In case, the discretion is to be exercised for



issuing warrants of arrest, reasons have to be recorded as contemplated under Section 82 Cr.P.C. In the present case, reasons were duly recorded and the conduct of the petitioner shows that he had or has no intention of appearing before the Court as time and again he has sought opportunities to appear but never appeared before the Trial Court and he has already been declared a Proclaimed Absconder.

17. Reliance has also been placed on ***Inder Mohan Goswami & Anr. vs. State of Uttaranchal & Ors.*** decided by Hon'ble Supreme Court on 09.10.2007, in which it was held that where the accused has been charged with commission of offence of a heinous crime, then warrants can be issued and especially in cases where he is likely to evade the process of law or tamper or destroy the evidence. In the present case the accused has throughout evaded the process of law till date. He has already been declared a Proclaimed Absconder and his conduct shows that learned Metropolitan Magistrate was right in issuing the warrants against him and he being a police official, he had every opportunity to tamper or destroy the evidence and strangely the Investigating Officer had not taken any steps against Rajpal despite other co-accused being in jail for a long time under the similar circumstances, so, the Magistrate was right in issuing warrants against him.

18. Reliance has also been placed in the matter of ***Mani Shandley and Ors. vs. State and Ors.*** MANU/DE/0627/2008 . That was a case where the accused had not appeared on a regular date, so the NBWs were issued against him. This not a case against the present petitioner, so the facts of this case are on a different footing.

19. Reliance is also placed on ***G. Sagar Suri vs. State & Ors.,***



MANU/DE/0678/2003 where the NBWs were issued in a summons case, the case in hand is not a Summons case; it is a Warrant case, so this judgement is not applicable to the facts of this case.

20. In view of the above, the present petition is without any merit and the same is hereby dismissed with a cost of Rs. 25,000/- to be deposited with Delhi High Court Legal Services Committee within four weeks from today. A receipt thereof be placed on record.

TALWANT SINGH, J

JULY 15, 2022/nk/mr

[Click here to check corrigendum, if any](#)