

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR/826/2023

Mayukh Ranjan Sarbadhikary @ Mayukh Sarbadhikary
-Vs-
State of West Bengal

For the petitioner: Mr. Avik Ghatak, Adv.,
 Ms. Afreen Begum, Adv.

Heard on: 15 March, 2023.

Judgment on: 15 March, 2023.

BIBEK CHAUDHURI, J. : –

1. This is an application under Article 227 of the Constitution read with Section 482 of the Code of Criminal Procedure assailing an order dated 24th September, 2018 passed by the learned Chief Judicial Magistrate, Howrah in connection with GR Case No.1458 of 2011 arising out of Sankrail Police Station Case No.159 of 2011 dated 26th June, 2011 corresponding to Special Case No.75 of 2019 under Sections 406/409/417/418/420/120B/34 of the IPC.

2. On the basis of a written complaint submitted by the Deputy General Manager, UCO Bank, Howrah Zonal Office, Sankrail Police Station Case No.159 of 2011 dated 26th June, 2011 was registered against the present petitioner and other accused persons. On 7th February, 2013

the petitioner was arrested in connection with the above mentioned case and produced before the learned Chief Judicial Magistrate at Howrah. On 1st Mach, 2013 he was granted bail. Charge-sheet was submitted against the present petitioner and other accused persons under the above mentioned penal provision on 26th August, 2018. On 24th September, 2018 the petitioner and six other co-accused persons failed to appear before the learned lower court. The learned Chief Judicial magistrate cancelled the order of bail of the petitioner and other absentee accused persons, forfeited the bail amount and issued non-bailable warrant against them. Subsequently, on 29th July, 2019 the case was transferred to the court of the learned Special Judge at Howrah for trial. The case was renumbered on fresh registration as Special Case No.75 of 2019.

3. It is contended on behalf of the petitioner that police authority did not submit any non-execution report of warrant of arrest issued against the petitioner and other accused persons. It is also contended that the learned Chief Judicial Magistrate while issuing non-bailable warrant of arrest did not come to a specific finding to the effect that there is reason to believe that the accused will not voluntarily appear in court; secondly, the police authorities are unable to find the accused to serve summons and thirdly, the accused could cause harm to someone if not placed into custody immediately.

4. It is also urged on behalf of the petitioner that the learned Special Judge acted illegally and material irregularity in passing a composite order of proclamation and attachment without observing the steps stated

in Section 82 and 83 of the Code of Criminal Procedure. On such ground the petitioner has prayed for stating aside the impugned dated 24th September, 2018 and all subsequent orders.

5. Learned Advocate for the petitioner refers to the decision of the Hon'ble Supreme Court in **Inder Mohan Goswami & Anr. vs. State of Uttaranchal & Ors.** reported in **(2007) 12 SCC 1**. It is held in paragraph 54 of the above report that as far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or theailable warrants should be preferred. The warrants eitherailable or non-ailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

6. Thus, in **Inder Mohan Goswami** (supra) the Hon'ble Supreme Court has deprecated uncontrolled and often irrelevant exercise of magisterial power of issuance of non-ailable warrant without considering the service reports of summons.

7. Learned Advocate for the petitioner first draws my attention to the order dated 24th September, 2018 passed by the learned Chief Judicial Magistrate, Howrah. On that date the accused along with six others failed to take step before the learned Chief Judicial Magistrate at Howrah. The learned Magistrate issued warrant of arrest against them fixing 29th October, 2019 for execution report. Subsequently, the case was

committed to the Special Court for trial. Vide order dated 4th December, 2020 the learned Special Judge issued warrant of proclamation and attachment against the petitioner even without receiving any execution report of warrant of arrest issued by the learned Chief Judicial Magistrate on 24th September, 2018.

8. It is needless to say that before issuing proclamation under Section 82 of the Code of Criminal Procedure the learned Judge must peruse the non-execution report of warrant of arrest only when he is satisfied on subjective consideration of the facts and circumstances of the case that the accused cannot be arrested by the police authority in execution of warrant only in such case, the court can issue an order of proclamation under Section 82 of the Code. Before issuing proclamation under Section 82 of the Code, there must be an application supported with an affidavit of the prosecution to show and convince the learned court below that despite all possible efforts being taken by the prosecution for execution of warrant, appearance of the accused before the court could not be procured. Under such circumstances, the trial court can issue an order of proclamation under Section 82 of the Cr.P.C against the petitioner. The composite order of proclamation and attachment cannot be issued under Sections 82 and 83(1) of the Code in any event.

9. If the learned trial court is willing to issue proclamation and thereafter attachment under Sections 82 and 83 of the Cr.P.C against an accused, the decree of carefulness and precaution would be very high and such orders relating to the proclamation may be issued only on the

application of the prosecution supported with an affidavit that despite of reasonable efforts being taken against the accused to execute non-bailable warrant, the court by assigning specific and cogent reasons to the effect that there is no other way out except to initiate proceedings under Sections 82 and 83 of the Cr.P.C. Such proclamation can be issued in appropriate case, but it cannot be issued in a cursory manner.

10. In the instant case, the learned Special Judge issued warrant of proclamation and attachment without even receiving the execution report of warrant of arrest.

11. The impugned order dated 24th September, 2018 and also subsequent orders passed against the petitioner are bad in law and accordingly set aside.

12. The instant revision is, thus, allowed on contest.

(Bibek Chaudhuri, J.)