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04.07.2023
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C.R.R.2372 of 2023

In Re: An application under Section 482 read with Sections 397 and 401
of the Code of Criminal Procedure, 1973;

Sri Sanjay Gain
Versus
The State of West Bengal and another

Mr. Sabyasachi Mukherjee
Ms. Jayeeta Konder (Mitra)
Ms. Debarati Choudhury
Mr. Bibek Dey
Mr. Mukesh Khanna
Mr. Mrinmoy Nandi.
...for the petitioner.

Mr. Anwar Hossain
Ms. Debjani Sahu.
...for the State.

Learned advocate appearing for the petitioner is aggrieved by the manner in which the proclamation and attachment was issued. Learned advocate submits that the warrant of arrest was issued on 11th May, 2023 and the order of proclamation and attachment both were issued on 31st May, 2023. According to the learned advocate for the petitioner, the same is in violation of Sections 82 and 83 of the Code of Criminal Procedure and, as such, interference by this Court is called for in respect of the order dated 31st May, 2023.

Mr. Anwar Hossain, learned advocate appearing for the State opposes the application on the ground that the present case is under provisions of Sections 302/34 of the Indian Penal Code and

the accused persons in spite of efforts were not traceable.

To rebut such contentions, learned advocate for the petitioner submitted that the other persons who were implicated in the instant case were released on bail and, as such, the materials collected by the Investigating Agency is doubtful.

Be that as it may, on perusal of the order dated 11.05.2023 and 31.05.2023, I find that there are certain illegalities in the order passed by the learned ACJM, Barasat. Firstly, the proclamation and attachment was issued simultaneously. Secondly, there is no subjective satisfaction recorded while issuing the order of proclamation in compliance of the statutory period required for issuing such proclamation order.

In view of the aforesaid and considering the gravity of the offence, I direct that the proclamation and or subsequent attachment order so issued on 31st May, 2023 be stayed till 31st August, 2023. However, the warrant of arrest so issued will remain in force. Learned ACJM, Barasat will revive the proclamation prayer freshly issued by the Investigating Agency of the case if required on 1st September, 2023.

Petitioner would be at liberty to exhaust the remedies available under law within the aforesaid period of time.

With the aforesaid observations, CRR 2372 of 2023 is disposed of.

Pending application, if any, is consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)