

Form J(1)

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

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

CRR 4678 of 2022

**Tipu Khan @ Wazir Khan
Vs.
The State of West Bengal**

Mr. S. S. Roy
Mr. Dilip Kumar Samanta
Mr. Debapriya Samanta
...for the petitioner

Item No. 05.

Heard & Judgment on: 03.01.2023

Bibek Chaudhuri, J.

The petitioner is an accused in a case under Sections 21/28/29 of the Narcotic Drugs and Psychotropic Substances Act.

The petitioner has challenged order Nos. 15 dated 22nd July, 2022 wherein the learned Special Judge issued warrant of

arrest against the petitioner namely Tipu Khan alias Wazir Khan without assigning any reason. He has also challenged the order No.19 dated 19th November, 2022 where a composite order of issuance of warrant of proclamation and attachment was passed by the learned Special Judge on the ground of illegality and material irregularity. It appears from the order dated 22nd July, 2022 that the learned trial Judge did not assign any reason as contemplated under Section 87 of the Code of Criminal Procedure. Moreover, law is settled that a composite order of issuance of warrant of proclamation and attachment cannot be passed without obtaining the non-execution report of warrant of arrest. Since the order dated 22nd July, 2022 was passed without following the essential requirements of Section 87 of the Code of Criminal Procedure the said order suffers from patent illegality for non-compliance of statutory provision contained in Section 87 of the Code of Criminal Procedure. As this Court holds that order dated 22nd July, 2022 suffers from illegality, the subsequent order dated 19th November, 2022 also cannot stand.

In view of the above discussion, the instant revision is allowed. The orders dated 22nd July, 2022 and 19th November, 2022 are set aside.

The instant revision is disposed of.

This order, however, does not preclude the learned Special Judge to issue fresh warrant of arrest against the petitioner/accused following the provision of Section 87 of the Code of Criminal Procedure. If on subjective consideration she finds that issuance of summons will not serve the purpose, she is entitled to issue warrant of arrest directly after assigning the reasons for the same.

(Bibek Chaudhuri, J.)