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07.07.2023
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C.R.R.4693 of 2022

In Re: An application under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973;

Md Mohabbat Ali @ Mohabbat Ali
Versus
The State of West Bengal

Mr. M. Mukherjee
Mr. A. Patra
Mr. D. Kundu.

...for the petitioner.

Mr. Saswata Gopal Mukherjee, Ld. P.P.
Mr. Pravas Bhattacharya
Mr. Aniket Mitra.

...for the State.

The petitioner is directed to serve a copy of the revisional application upon Mr. Pravas Bhattacharya, learned advocate, who is led by the learned Public Prosecutor.

Mr. Mukherjee, learned Public Prosecutor in course of hearing of the revisional application has opposed the contention of the present petitioner particularly with regard to the complicity of the present petitioner in the instant case as well as his version regarding the issuance of proclamation and attachment issued in respect of the present petitioner.

Learned advocate appearing for the petitioner is aggrieved by issuance of proclamation and attachment by a single order dated 12.10.2022. Learned advocate submits that there has been non-compliance of the provisions of Section 82 of the Code of Criminal Procedure.

I find that the learned ACJM, Chanchal, Malda on 12.10.2022 issued WPA fixing the next date as 28.10.2022. The next order dated 22.11.2022 reflects that there was non execution return of proclamation and then issued WPA under Section 82 of the Code of Criminal Procedure has been made.

So far as the orders dated 12.10.2022 and 22.11.2022 are concerned, the foundation of both the orders are on the basis of non execution return of the warrant of arrest as well as the proclamation. In both the orders, there were non-application of mind by the learned ACJM, Chanchal, Malda. So far as the order dated 12.10.2022 is concerned, there should have been a month's time granted for the proclamation to be complied in the mode and manner as has been stated under Section 82 of the Code of Criminal Procedure and thereafter the petitioner could have been declared as a proclaimed offender. In the order dated 22.11.2022 there is no reflection as to whether there was any publication or in any conspicuous place any notice was served/pasted directing the accused to appear. As such, interference is required although the petitioner cannot be granted absolute blanket protection in this case.

The proclamation and attachment order so issued by the learned ACJM, Chanchal, Malda be kept in abeyance till 28th July, 2023. However the aforesaid order will not deter the police authorities to execute the warrant of arrest which were earlier issued subsequent to the charge-sheet/supplementary charge-sheet filed against the present petitioner. The petitioner will exhaust his

remedy in the meantime and the revisional application is disposed of with a direction that there shall be no further extension of the aforesaid period so granted for availing the remedies under law.

With the aforesaid observations, CRR 4693 of 2022 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.)