

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71479 of 2023

Arising Out of PS. Case No.-632 Year-2023 Thana- PATLIPUTRA District- Patna

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1. Pappu Rai S/O Late Mahendra Rai Village/Mohalla- Gate No. 65, Kurji More, Ps. Digha, Patna
 2. Gorakh Rai S/O Late Mahendra Rai Village/Mohalla- Gate No. 65, Kurji More, Ps. Digha, Patna
 3. Dhappu Rai @ Rajkumar Rai S/O Late Mahendra Rai Village/Mohalla- Gate No. 65, Kurji More, Ps. Digha, Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Suresh Rai S/O Late Lakshmi Rai Resident Of Kurji Gate No. 65, Ps. Digha, Dist. Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Avinash Kumar Singh, Adv.
For the Opposite Party/s	:	Mr. Choubey Jawahar, APP
For the O.P. No.2	:	Mr. Rajesh Shukla, Adv.
		Mr. Prince Kumar Mishra, Adv.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 23-01-2024 1. Heard the learned counsel for the petitioners and learned APP for the State along with learned counsel for the O.P. No.2.

2. The learned counsel for the petitioners submits that the present quashing application has been filed, seeking quashing of the orders dated 28.08.2023, 30.08.2023 and 11.09.2023, whereby the learned A.C.J.M.-X, Patna was pleased to issue non-bailable warrant of arrest, proclamation under section 82 of the Cr.P.C. and process for attachment of moveable property, under section 83 of the Cr.P.C. respectively against the petitioners, in



connection with Patliputra P.S. Case No. 632/2023 dated 31.07.2023, registered under sections 326, 307 and 120B of the IPC read with section 27 of the Arms Act, in which section 302 of the IPC was added later.

3. The learned counsel for the petitioners raises a short question of law and submits that the instant F.I.R. was instituted on 31.07.2023. It is next submitted that on 28.08.2023, non-bailable warrant of arrest were issued, thereafter, on 29.08.2023, the I.O. of the case filed an application before the learned trial court, seeking process under section 82 Cr.P.C. and on 30.08.2023, process under section 82 Cr.P.C. was issued by the learned trial court, and thereafter, on 11.09.2023, process under sections 83 Cr.P.C. was issued. The learned counsel for the petitioners submits what is not disputed rather stand admitted is that the F.I.R. was instituted on 31.07.2023, in which section 302 IPC was added later but prior to that also, the F.I.R. was instituted under various sections of the IPC, which related to cognizable offence, it is next submitted that it absolutely does not stand to reason that as to why an application dated 29.08.2023 was filed by the I.O. of the case, seeking process under section 82 of the Cr.P.C., when the offence alleged in the F.I.R. were cognizable, for which no warrant was required and the I.O. could have arrested the accused persons even without warrant. The learned counsel next submits that what is more shocking is



that the learned trial court on 30.08.2023 issued process under section 82 Cr.P.C., when the same ought not to have been done for the reason that courts are not meant for aiding the prosecution in the investigation. The learned counsel next submits that the Magistrate was empowered to issue non-bailable warrant of arrest but then it is for the presence of the accused before the Court and not for aiding the police in investigation. It is next submitted that since the petitioners were implicated in a case registered under section 302 IPC, which is a cognizable offence, as such, there was absolutely no need of non-bailable warrant of arrest to be issued by the Court, on the petition of the I.O., as the I.O. was empowered to arrest the accused even without the warrant of arrest. The learned counsel for the petitioners next submits that the entire effort of the I.O. was to somehow get the process completed for getting processes under sections 82 and 83 of the Cr.P.C. issued. It is also submitted that from perusal of the order dated 28.08.2023, whereby non-bailable warrant of arrest was issued under section 73 of the Cr.P.C., it would manifest that the same is cryptic and does not record reasons rather the learned trial court has observed that the accused persons are running away from the fear of arrest, as such, non-bailable warrant of arrest was issued. It is next submitted that the order itself speaks volume that court was aiding the police in its investigation, the learned counsel next



draws the attention of the Court to order dated 30.08.2023, to submit that the process under section 82 Cr.P.C was also issued without recording any reason rather the order merely records that the application filed by the I.O., seeking process under section 82 Cr.P.C. is allowed.

4. The learned counsel appearing on behalf of the O.P. No.2 submits that a counter affidavit has been filed and vehemently opposes the submissions made by the learned counsel for the petitioners and submits that in terms of section 73 Cr.P.C., the Magistrate is empowered to issue non-bailable warrant of arrest, in the event if the accused is an escaped convict, a proclaimed offender or is evading arrest, it is next submitted that the learned Magistrate in his order, by which non-bailable warrant of arrest has been issued has recorded that petitioners are evading arrest and the case diary was before him and it showed that on three different dates the house of the petitioners was raided but they were absconding, it is next submitted that the petitioners have filed anticipatory bail after the process under section 83 Cr.P.C. was issued and the proclamation, which has been issued, is only for the purposes of appearance of the petitioners before the court.

5. The learned counsel for the petitioners vehemently rebuts the submission of the learned counsel for the O.P. No.2 and submits that the non-bailable warrant of arrest, which was issued



was merely on the asking of the police, it is next submitted that though in the case diary, it is recorded that on three different dates, the house of the petitioners were raided but they were not found, it is then submitted that does it justify the police to seek non-bailable warrant of arrest merely because the police was not able to apprehend the petitioners, (or the police was trying to seek process under section 82 Cr.P.C. on the ground that non-bailable warrant of arrest has already been issued), it is further submitted that non-bailable warrant of arrest was issued on 28.08.2023 and on 29.08.2023, the process under section 82 Cr.P.C. was prayed by the police, which amply demonstrate that the police was only trying to seek the help of the court in arresting the accused, which is not the mandate of section 73 Cr.P.C. and section 82 Cr.P.C., it is next submitted that the court was swayed by the application filed by the police on 29.08.2023, seeking process under section 82 Cr.P.C., and thus, on the very next date, the process under section 82 Cr.P.C. was also issued, which further goes to strengthen the argument that the court was doing nothing but merely aiding the police in investigation, when the offence was cognizable, for which police did not require any non-bailable warrant of arrest for arresting the accused persons. It is next submitted that the Courts are required to act in accordance with law and not in breach of the same and particularly, when the investigating agency is showing



its incompetence, in investigating the case, in that event, the court had to be more cautious.

6. Considering the submissions made by the learned counsel for the petitioners and also taking into account the submissions recorded hereinabove, the orders dated 28.08.2023, 30.08.2023 and 11.09.2023, whereby non-bailable warrant of arrest, proclamation under section 82 of the Cr.P.C. and process for attachment of moveable property, under section 83 of the Cr.P.C have been issued by the learned A.C.J.M.-X, Patna in connection with Patliputra P.S. Case No. 632/2023, is hereby quashed.

(Satyavrat Verma, J)

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