

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 75 of 2022

(Assigned)

Saran Gopal Krishnan

Vs

Narcotics Control Bureau, Kolkata.

For the Petitioner : Mr. Arpit Batra (through VC),
Mr. Amit Pan,
Mr. Debarshi Das.

For the NCB : Mr. Anirban Mitra.

Hearing concluded on : 08.01.2024

Judgment on : 15.01.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for setting aside of Warrant of Arrest dated 05.06.2018, Warrant for Proclamation & Attachment dated 21.02.2019, and order dated 05.10.2021, all of which have been issued/passed by the Court of the Learned Additional District & Sessions Judge, 6th Court, Barasat.
2. The Petitioner a resident of State – Kerala, presently resides at Dubai (UAE) for employment.
3. The petitioner herein submits that he seeks to set aside the Warrant of Arrest dated 05.06.2018, Warrant for Proclamation & Attachment dated 21.02.2019, and the order dated 05.10.2021 rejecting the application seeking setting aside of warrant for arrest, all of which have been passed by the Court of the Learned Additional District & Sessions Judge, 6th Court, Barasat in derogation of the procedural safeguards provided therewith, and the law laid down by the Hon'ble Constitutional Courts of India.
4. It is stated by the petitioner that the proceedings in this case has been initiated by the Narcotic Control Bureau relating to an incident on 12.12.2017 regarding delivery of substantial quantity of LSD blots and some quantity of MDMA to some of the accused persons.
5. During investigation it transpired that one of the accused Rhythm Das Roy transferred money to his friend Saran Gopal's State Bank of India

Account No. 20137002414 for further order and delivery to Niloy Ghosh and being a middleman Rhythm Das Roy gained monetary benefit of Rs. 800-1000 per gram of MDMA. Rhythm Das Roy also revealed that Saran Gopal Krishnan had asked him to deliver MDMA, LSD to Niloy Ghosh from one of his darkweb vendor of drugs available at Nashik and the vendor at Nashik further shipped the consignment to Niloy Ghosh at Calcutta through DTDC Courier service.

6. Another accused Kamlesh Baste, confessed that on the directions of one Saran Gopal, he shipped drugs to Niloy Ghosh of Kolkata. He further stated that he and Saran Gopal used to communicate through encrypted chat of darkweb, and Saran Gopal Krishnan used to send money through "BITCOIN" to Baste.
7. On 21.03.2018, the officers of Narcotics Control Bureau forwarded a Letter bearing No. 62/NCB/KOL/2017-1372-13 dated 21.03.2018 with a request to issue a Look-Out Circular in the name of the petitioner and accordingly Bureau of Immigration opened a LOC vide LOC Suspect No. 1841637 to 1841637.
8. The petitioner states that he was not given a fair chance to be heard by and before the investigating agency, since even before a notice U/s 67 of Narcotics Drugs and Psychotropic Substances Act, 1985 was issued to the petitioner, a Look-out Circular was issued and a prohibitory order was passed against him which barred him to join and co-operate with the investigation, despite the petitioner having most bona fide intentions. In

this manner, without there being any warrant, such illegal and coercive order of a Look-out Circular was issued.

- 9. As seen from the order under revision, the validity of the said LOC has now expired.**
- 10.** The petitioners' prayer for Anticipatory bail was rejected by the Sessions Judge, 6th Court, Barasat on 19.09.2018.
- 11.** That upon the non-execution of warrant of arrest, the Learned Trial Court was pleased to issue Warrant of Proclamation & Attachment against the petitioner vide order dated 21.02.2019.
- 12.** The petitioner then filed a Writ Petition before the Hon'ble Supreme Court of India titled as, "Saran Gopal Krishnan v. Union of India through Intelligence Officer" bearing Writ Petition (Criminal) No. 141/2019 on 01.03.2019 seeking inter alia for setting aside of the said Lookout Circular issued by the Union of India. Subsequently, the matter got registered on 07.05.2019. However, the same was withdrawn pursuant to an order dated 04.10.2019. Subsequently, a representation dated 20.10.2019 was sent to the NARCOTICS CONTROL BUREAU by the Petitioner, but to no avail.
- 13.** Finally an application filed by the petitioner praying for recall of the LOC, W.A. and WPA was rejected vide the order under revision, by the learned Sessions Court.
- 14.** The petitioner has now preferred the present revisional application praying for recall of the warrant of arrest/proclamation issued and also

for setting aside of the order dated 05.10.2021 of the Learned Session Judge rejecting the prayer for such recall.

15. Learned Counsel for the Opposite party/NCB has vehemently opposed the said relief prayed for on filing an Affidavit in opposition and submitting that the case being of such Magnitude, it will be totally against the interest of justice and the Nation to consider such prayer and will also be an abuse of process of law. No reply to the said opposition has been filed by the petitioner.
16. **It appears from the order under revision,** and the findings of the Learned Judge therein that as the validity of LOC had expired, it was thus no more in existence and as such there was no need to pass any order in respect of the prayer for setting side of the said LOC.
17. The said findings of the Learned Judge being in accordance with law requires no interference by this Court.
18. Regarding the prayer for recall of W.A, W.P.A., the Learned Session Judge held as follows:-

*“.....It is on record that despite the issuance of W.A., W.P.A., and **filing of case For the Present** against Saran Gopal Krishnan and rejection of bail application u/s 438 Cr. P.C. the applicant has never come forward and considering the present facts and circumstances of this case in its totality ie issuance of W.A, W.P.A., filing of the case For The Present and the conduct of the applicant, this court is not inclined to cancel the W.A. issued against Saran Gopal Krishnan vide Order dt. 05.06.18 and presently, in this case, the prosecution evidence is being recorded.....”*

19. Thus the present status of the case is that the case/trial against the petitioner has been filed for the present, due to non appearance of the petitioner.

20. Trial in respect of the other accused persons has commenced.

21. A Warrant of arrest issued by the Court is a process to secure the presence of the Accused in Court. The Accused in this case, was never arrested during the course of investigation, against whom now a Warrant of arrest and proclamation has been issued by the Court after taking cognizance of the offences. As per section 73 of the Criminal Procedure Code, a Warrant can be issued only to secure the presence of any escaped convict, proclaimed offender or when the person accused of a non-bailable offence, is evading arrest. In the light of the language employed in section 73 of Criminal Procedure Code a warrant of arrest can be issued after coming to the conclusion that there is no other way to secure the presence of the accused. Where the Accused was never arrested during the course of investigation, as he evaded arrest even after taking cognizance on the final report. If the Court has issued a Warrant of arrest and if the Accused approaches the Court for recalling the said warrant under Section 70(2) of Cr.P.C., the consideration would be totally different. **In such circumstances, the Court will have to consider the gravity of the offences, role played by the Accused, his roots in the society, likelihood of abscondence, need of custodial interrogation by the Police, etc.** More or less, the factors which are to

be taken into account while considering a Petition for recall of warrant would be akin to the facts which are taken into consideration while considering a Petition for bail (***State vs Subash Chandra Kapoor, in Crl. O.P. No. 9983 of 2012, on 27.04.2012***).

22. Same is the circumstances in respect of the petitioner in this case:-

- i) The offence alleged in the present case is grave and serious.
- ii) Role played by the petitioner is prima facie supported by documents, records and other materials on record including the case diary.
- iii) Admittedly **the petitioner resides out of the Country** and thus his presence for conduct of a proper trial and a just decision in the case is necessary, but difficult.
- iv) The presence of the petitioner in this case is thus uncertain as he has neither appeared before the investigating agency nor the Court (Defense being his fear of arrest).
- v) The petitioner did not pray for Anticipatory bail before the Higher Forum (Courts) on his prayer being rejected by the Trial Judge.

23. In ***State vs. Subash Chandra Kapoor***, Case No. Crl. O.P. No. 9983 of 2012, on April 27, 2012, the Court held:-

“16. An Accused, who is facing a Non-Bailable Warrant for his arrest may be put in either one of the following categories, viz., (i) an Accused who has been already on bail, but, due to his absence on a particular day of hearing,

a Non-Bailable Warrant has been issued for his arrest and production before the Court, and (ii) an Accused who was never arrested during the course of investigation against whom a Non-Bailable Warrant has been issued by the Court after taking cognizance of the offences.

18. *In the second category of cases, where the Accused was never arrested during the course of investigation as he evaded arrest and after taking cognizance on the final report, if the Court has issued Non-Bailable Warrant, if the Accused approaches the Court for recalling the said warrant under Section 70(2) of Cr.P.C. the consideration would be totally different. Here, the Court will have regard for the gravity of the offences, role played by the Accused, his roots in the society, likelihood of abscondence, need of custodial interrogation by the Police, etc. More or less, the factors which are to be taken into account while considering a Petition for recall of warrant would be akin to the facts which are taken into consideration while considering a Petition for bail.*

19. *Undoubtedly, the instant case falls within the second category. Therefore, when the Accused approached the learned Magistrate under Section 70(2) of Cr.P.C. for recall of warrant, the learned Magistrate ought to have considered the above relevant factors, such as, the gravity of the offences, role played by the Accused, roots of the Accused in the society, possibility of abscondence, need for custodial interrogation, the antecedents of the Accused, materials available against him, etc. But in this case, a perusal of the order of the learned Judicial Magistrate would go to show that he has not at all considered the above relevant facts such as the gravity of the offence; role played by the Accused, need for custodial interrogation and all the other attending circumstances. The learned Judicial Magistrate has also not considered the fact that the presence of the Accused is very much required by the Police for the purpose of interrogation so as to know about the whereabouts of the stolen idols and to recover the same. The learned Judicial Magistrate has considered only the serious illness and the age of the Accused. The learned Magistrate has discussed the rival contentions of the parties only in paragraph No. 3 of the order which reads as follows:*

“3. Heard both sides, and carefully perused the case records and documents submitted by the both sides. Admittedly that the Petitioner is arrayed as 7th Accused in the above case and now he is in custody in Cologne prison, Germany. As per the documents filed by the Petitioner's Counsel that the Petitioner has affected (sic) as severe cancer. Considering the above facts of the case and the serious illness decease (sic) and the old age of the Petitioner, this Court inclined to cancelled (sic) the Non-Bailable Warrant issued by this Court as against the Petitioner/Accused subject to following stringent conditions.”

20. *The above extracted portion of the order shows the total non-application of mind on the part of the learned Magistrate. As I have already narrated, the learned Magistrate did not have regard for the fact that the offence involved is a heinous offence, in which, as many as 18 valuable idols, which are antiques have been stolen away and the same have not been so far recovered. These stolen properties are all our national assets. It is the bounden duty of the Government to ensure that they are rescued and restored to the national wealth. If only, as it is stated by the learned Public Prosecutor, the Respondent is extradited to India and taken into the custody by the Police, the same would be possible.*

22. *As has been rightly submitted by the learned Public Prosecutor, if the order of the learned Magistrate recalling the Warrant is sustained, it may be taken as though it is an order of bail so as to force the Police to discontinue the Extradition proceedings. Admittedly, the Respondent is not on bail. Even this Court has declined to grant anticipatory bail to him. He is an Accused, who is wanted for arrest. Simply because, the Warrant issued against him, which is after all a process to compel his appearance, has been cancelled, it will not amount to automatic grant of bail.*

23. *Let us now consider as to whether it would be appropriate to cancel the Non-Bailable Warrant when the Extradition proceeding is in progress. Section 29 of the Extradition Act, 1962 reads thus:*

“29. Power of Central Government to discharge any fugitive Criminal.— If it appears to the Central Government that by reason of the trivial nature of the case or by reason of the Application for the surrender or return of a fugitive Criminal not being made in good faith or in the interests of justice or for political reasons or otherwise, it is unjust or inexpedient to surrender or return the fugitive Criminal, it may, by order, at any time stay any proceedings under this Act and direct any warrant issued or endorsed under this Act to be cancelled and the person for whose arrest the warrant has been issued or endorsed to be discharged.”

24. *A perusal of the above provision would make it abundantly clear that in the case on hand, if the Respondent feels that the Extradition Proceedings initiated against him should be discontinued, it is for him to approach the Central Government seeking discharge as provided in Section 29 of the Extradition Act. Thus, it is crystal clear that so long as the proceeding initiated under the Extradition Act is pending, it would not be appropriate for the learned Magistrate to recall the Non-Bailable Warrant issued to secure his presence.*

29. *In view of the foregoing discussions, in nutshell, I am of the view that so long as the Extradition proceedings are pending, the learned Magistrate ought not to have recalled the Warrant by invoking his power under Section 70(2), Cr.P.C. If the Respondent is set at liberty by the German Authorities then there is no assurance that the Respondent will return to India and appear before the Trial Court for facing the trial and also subject himself for interrogation by the Police. So long as the idols which have not been recovered, in my considered opinion, the matter requires further deep investigation by the Police for which custodial interrogation of the Accused may be required. The power of the Police under Section 173(8), Cr.P.C., is very much available for them to have further investigation in the event the Respondent returns to India on extradition.*

30. *In view of all the above, I hold that the order of the learned Magistrate dated 12.4.2012 in Cr.M.P. No. 2492 of 2012 is liable to be set aside and the consequently, all the*

consequential proceedings including the execution of bond, etc., shall also stand set aside.”

24. Though in the present Case no extradition proceeding has yet been initiated, the facts and circumstances are similar.
25. In the present case, the findings of the Learned Sessions Judge, while rejecting the prayer for recall of the W.A. and W.P.A., is based on correct observations and thus, being in accordance with law requires no interference by this court.
26. **Any indulgence shown in such cases considering the conduct, would clearly amount to an abuse of process of law.**
27. **CRR 75 of 2022 is thus dismissed.**
28. All connected Applications, if any, stand disposed of.
29. Interim order, if any, stands vacated.
30. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
31. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)