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Ct. No. 3

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction**

C.R.R. 230 of 2024

**Sekh Raju
Vs.
The State of West Bengal**

Mr. Hillol Saha Poddar
...For the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. A.P.P,
Mr. Ujjwal Luksom
....For the State.

Mr. Ujjwal Luksom, learned Advocate who usually conduct cases on behalf of the State before this Bench, is hereby appointed as Advocate on behalf of the opposite party no.1/State. Concerned Department is directed to regularize appointment of Mr. Luksom in this case. Since the present application pertains to a procedural aspect involving trial, the service of copy of application upon private opposite party no.2 is hereby dispensed with.

Being aggrieved by an order dated 25th June, 2024 passed by the learned Additional Sessions Judge, Tufanganj, in connection with Session case no. 51 of 2022, present application has been preferred by the petitioner. By the impugned order learned Court below issued warrant of arrest against the petitioner.

It is submitted that 25th June, 2024 was fixed for evidence of charge sheet mentioned witness no.(s) 3 and 4 and on that date the petitioner /sole accused was represented through his pleader by

filing petition under Section 317 on the ground that he had gone outside to earn his livelihood and as such failed to appear physically before the Court.

However, learned Court below quoting the condition imposed by this Court while granting bail to the petitioner, issued warrant of arrest against the petitioner.

Mr. Hillol Saha Poddar on behalf of the petitioner submits that on perusal of the previous orders it clearly reveals that charge sheet mentioned witnesses were not present and as such there was no requirement for the accused to appear physically before the Court on that day. He further submits it is not the case of prosecution that as petitioner did not appear physically before the Court below, the Session trial was deferred or the trial could not be conducted. The Court below whimsically and without assigning reason had issued warrant of arrest only on the ground that the petitioner all along represented by filing application under Section 317 of the Cr.P.C., without considering the fact that even on the date when the impugned order was passed, prosecution could not bring any witness before the Court for examination. Accordingly he has prayed for recalling the warrant of arrest and at the same time Mr. Saha Poddar undertakes that his client will invariably present before the Court below physically on the next date of hearing that is on 4th September, 2024.

Mr. Luksom, learned Counsel appearing on behalf of the State submits that the Hon'ble Court while granted bail to the

petitioner imposed a conditions that the petitioner shall appear before the Trial Court on every date of hearing until further order but the petitioner did not appear physically on the date when the impugned order was passed. However, he submits if the petitioner secures his attendance on the next date of trial then the State has got no objection in the event of recalling the warrant of arrest by this Court.

I have considered submissions made by both the parties. It is true that while Division Bench of this Court granted bail to the petitioner one condition was imposed that the petitioner shall appear before the Trial Court on every date of hearing until further order.

Order impugned clearly states that on earlier occasion petitioner's personal attendance was dispensed with and he was allowed by the Court to represent through his lawyer. Section 317 enables the Court to dispense with the personal attendance of the accused when represented by a pleader, if the Court is satisfied that such attendance is not necessary. It is equally true that after granting exemption, the Court may at any time afterward, for sufficient reason direct the personal attendance of accused for identification or for any other purpose. Order impugned does not reflect that Court below specifically asked him to appear personally. No direction was made to surety to bring the accused physically. Order impugned does not say that any charge-sheet mentioned witness was present on that day to dispose, nor it suggest that due to his non-attendance through physical mode, witnesses could not

be examined.

Thus order impugned calls for interference as it does not disclose any sufficient reason for cancellation of bail bond and issuance of warrant on that particular day. Merely because accused was not present physically on earlier dates, and was represented through pleader, perhaps does not justify for the Court to come to a conclusion that his attendance cannot be secured or he has become absconder.

Since the Counsel for the petitioner undertakes that petitioner will appear physically without fail on the next date of hearing I find that the order of warrant of arrest passed by the Court below may be recalled to give opportunity to the petitioner for his representation through physical mode as desired by the Court below.

In such view of the matter CRR 230 of 2024 is hereby disposed of with a direction upon the petitioner herein to appear physically on the next date of trial that is on 4.9.2024 and on subsequent dates when the Court below will ask him to appear physically and thereby the warrant of arrest issued against the petitioner is hereby recalled. He is put to earlier bail bond.

However, if the petitioner fails to appear physically on the next date of trial or fails to comply the order of the Court in terms of his attendance, the Court below will be at liberty to issue warrant of arrest instantly without making any further reference to this Court.

(Ajoy Kumar Mukherjee, J.)

