

14.08.2024
Ct. 3
Sl.47
BD.

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

CRR 249 of 2024

Swapan Das
-Vs-
The State of West Bengal.

Mr. Sourav Ganguly
Mr. Bivek Tarafdar
Mr. Gopal Roy
Ms. Rishita Chakraborty for the Petitioner.

Mr. Ujjal Luksom for the State

The supplementary affidavit filed by the petitioner is taken on record.

From the supplementary affidavit read with the main application it appears that the petitioner has challenged the Order No. 22 dated 20th February, 2024 by which the Court below has issued warrant of proclamation and warrant of attachment at the same time in a proceeding being NDPS Case No. 19 of 2023 arising out of Rajganj Police Station Case No. 101 of 2023 dated 25.02.2023 under sections 20(b)(ii)(c)/25/29 of NDPS Act, 1985 pending before the learned Additional Sessions Judge, First Court, Jalpaiguri.

It is contended on behalf of the petitioner that petitioner in no way connected with the alleged offence. However, the investigating authority has submitted charge-sheet against the present petitioner after completion of investigation. He further submits that the Court below had taken cognizance upon the offence mentioned in the charge-sheet by order no. 16 dated 16.08.2023. Thereafter by order dated 25th August, 2023 the court below was pleased to issue warrant of arrest against the present petitioner, since petitioner was found absent after submission of charge-sheet against him. Thereafter it appears from the subsequent orders that no execution report of warrant of arrest was received from the concerned police station, which is also reflected in the order impugned where he recorded that no execution report of warrant of arrest in respect of present petitioner Swapan Das, has been received from Falakata Police Station. In spite of that the Court below had issued warrant of attachment and warrant of proclamation at the same time, by a cryptic order.

I have considered the issue in controversy and also perused relevant orders.

It is very much apparent from the order impugned that no execution report of warrant of arrest against present petitioner Swapan Das has been received by the Court, but curiously Court below simultaneously issued warrant of proclamation and warrant of arrest, which is totally contrary to the provisions laid down in section 82 read with section 83 of the Code. The

condition precedent to issue warrant of proclamation is to establish that though a warrant of arrest has already been issued, but the accused is absconding. Only on receipt of non-execution report from concerned police station, Court can go for issuance of warrant of proclamation under section 82 in order to secure attendance of the accused. However, simultaneous issuance of warrant of proclamation and attachment is illegal. Only in the circumstances mentioned in the proviso to sub-section(1) of section 83, the Court is authorized to issue the warrant of proclamation and order of attachment simultaneously.

In the present context Court has not expressed in the order impugned as to what is his reason to believe that the accused/petitioner is absconding or is concealing himself. Such observation must have been reflected in order before invoking jurisdiction under section 82 of the Code. Mere non-receipt of any report from police authority about execution of warrant of arrest, without anything more does not authorize the Magistrate to issue an order for proclamation or attachment. Since such action affects certain valuable rights of a person, who may be an accused, it is not supposed to be interfered with, in a casual and mechanical manner as has been done here. From the language used in section 83 of the Code, legislative intent is very much clear that the Court must record it's reasons for taking action for proclamation and attachment and it must also satisfy about the abscondence of the accused as well as about the dealing with the property of the accused,

without which the issuance of order for proclamation and/or attachment cannot be said to be valid exercise of power. An accused can be declared as absconder when Court is satisfied by police report or otherwise that the accused had left his address or is avoiding service or there is no chance of arrest of the accused in near future.

In the judgment passed in *CRR 161 of 2024 (Md. Enamul @ Enamul Rahaman –vs- The State of West Bengal & Ors.)* this High Court on a similar context held as follows:

“10. It is needless to state that jurisdiction to pass an order of attachment cannot be assumed by the court below unless a proclamation under section 82 of the code has been issued. The provisions make it clear that the normal rule to be followed by the magistrate is to wait until the expiry of 30 days to enable the accused to appear in terms of the proclamation. The words “at any time after the issue of proclamation” appearing in section 83(1) only means that if after the issue of proclamation either of the two conditions mentioned in clauses (a) or (b) of the proviso to section 83 (i) comes into existence, an attachment may be made without waiting for 30 days to expiry but even in such a case the magistrate has to record reasons for arriving at the judicial satisfaction that conditions mentioned in section 83 (1) (a) or (b) has been satisfied and for which he has issued simultaneous order for proclamation and attachment.”

The order impugned passed by the Court regarding issuance of proclamation as well as issuance of attachment simultaneously by the impugned order dated 25th February, 2024 is bad in law and is not sustainable. Therefore, the Order No. 22 dated 20th February, 2024 and also

subsequent orders so far it relates to issuance of warrant of proclamation and warrant of attachment simultaneously are hereby quashed.

However, this order will not prevent the authority concerned to execute warrant of arrest as ordered by the court below vide order no. 17 dated 25th August, 2023 unless petitioner has obtained bail or warrant of arrest has been recalled by the Court below due to his surrender or otherwise.

Accordingly, CRR 249 of 2024 is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)