



2024:DHC:5287



\$~

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Pronounced on: 18.07.2024+ **CRL.M.C.3952/2024, CRL.M.A. 15075/2024 & CRL.M.A. 15076/2024**

LAKSHAY JAISWAL

..... Petitioner

Through: Mr K. K. Manan, Sr. Advocate with
Ms Udit Bali, Mr Karmanya Singh
Choudhary and Mr Harshit Jain,
Advocates.

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr Raj Kumar, APP for the State
with SI Sonal Raj, SI Ridhima, PS
Model Town.
Mr Sunil K. Mittal, Mr Anshul Mittal,
Ms Asha Jyoti and Mr Sarthak Tagra,
Advocates for complainant.

AND

+ **BAIL APPLN. 893/2024**

LAKSHAY JAISWAL

..... Petitioner

Through: Mr K. K. Manan, Sr. Advocate with
Ms Udit Bali, Mr Karmanya Singh
Choudhary and Mr Harshit Jain,
Advocates.

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr Raghvinder Varma, APP for the
State with SI Sonal Raj, SI Ridhima,
PS Model Town.
Mr Sunil K. Mittal, Mr Anshul Mittal,

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19.07.2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 1 of 26



2024:DHC:5287



Ms Asha Jyoti and Mr Sarthak Tagra,
Advocates for complainant.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 482 CrPC challenging the order dated 26.04.2024 passed by the learned Metropolitan Magistrate, whereby the stay on process under Section 82 CrPC issued against the petitioner/accused *vide* order dated 14.02.2024, which was granted *vide* order dated 23.02.2024, was vacated.

2. The brief facts giving rise to the filing of the present petition are as follows:

- i) FIR under Section 354(B)/506/509 IPC came to be registered against the present petitioner at the instance of the complainant on 31.01.2024 at PS Model Town.
- ii) It is the case of the prosecution that a notice under Section 41A CrPC was given by the investigating officer on 03.02.2024 to the petitioner asking him to appear on 04.02.2024, which was admittedly served on the mother of the petitioner. Similar notice is stated to have been given by the investigating officer to the petitioner on 05.02.2024 asking him to appear on 06.02.2024 before the Investigating Officer. The said notice is also admittedly served on the mother of the petitioner. On the same date i.e., 06.02.2024 mentioned in the second notice under Section 41A CrPC for appearance of the

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07.2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 2 of 26



2024:DHC:5287



petitioner/accused, the investigating officer filed an application before the court of learned Metropolitan Magistrate praying for issuance of non-bailable warrants (NBWs) against the accused stating that the accused is deliberately avoiding to join the investigation and he is required for the purpose of investigation. The relevant paras of the application dated 06.02.2024, so filed by the investigating officer, reads thus:

“During course of investigation on 03.02.24 and 05.02.2024 notice u/s 41A CrPC was served to mother of the accused namely Aarti Jaiswal as accused was not found present at home but he didn't join investigation so far. Accused is deliberately avoiding to join the investigation.

It is therefore requested before this Hon'ble court that NBW may please be issued against accused above for the purpose of investigation.”

iii) On the application the learned Metropolitan Magistrate passed an order on 06.02.2024, which reads thus:

“06/2/24

Pr. Ld. APP for the State.

IO/W/SI Meena with case file

IO/ submitted application for NBW accused Lakshay.

Heard

NBW issued accused Lakshay for 12/2/24.

Sd/-”

iv) Apprehending arrest in the said case, an application seeking pre-arrest bail under Section 438 CrPC was filed by the petitioner on 07.02.2024 before the learned Additional Sessions Judge.

v) While, the said application of the petitioner under Section 438

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07/2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 3 of 26



2024:DHC:5287



CrPC was pending, an application dated 14.02.2024 was moved by the investigating officer/SI Meena requesting the court of learned Metropolitan Magistrate to initiate process under Section 82 CrPC against the petitioner/accused Lakshay Jaiswal.

vi) On the said application, the learned Metropolitan Magistrate passed an order on 14.02.2024, whereby the said application was allowed and process under Section 82 CrPC was initiated for proceedings against the petitioner/accused Lakshay Jaiswal for 28.03.2024. The order dated 14.02.2024 reads as under:-

*“Ld. APP for the State
I.O SI Meena with Case file
I.O submit application 82 CrPC
Heard
Application is allowed
82 CrPC against accused Lakshay Jaiswal is issued for 28/3/24*

Sd/.”

vii) Sequel to above, the petitioner/accused filed an application for recalling/cancellation of process under Section 82 CrPC issued against the petitioner/accused Lakshay Jaiswal.

viii) The learned Metropolitan Magistrate, considering the fact that the proceedings under Section 438 CrPC for grant of anticipatory bail are pending before the learned Sessions Court, *vide* order dated 23.02.2024 directed to stay the process under Section 82 CrPC till 28.03.2024.

ix) In the meanwhile, *vide* order dated 04.03.2024, learned Additional Sessions Judge-3 (North)/Rohini Courts, Delhi dismissed the application of the petitioner seeking anticipatory bail. Thereafter, a

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07/2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 4 of 26



2024:DHC:5287



bail application being BAIL APPLN. 893/2024 titled 'Lakshay Jaiswal vs. State' was filed by the petitioner before this Court and the same was listed for hearing on 12.03.2024, when this Court issued notice.

x) Since the petitioner/accused, as well as, the complainant are neighbours and most of the offences alleged were compoundable, time was sought by the parties to find an amicable resolution to the disputes between the parties and for the said purpose the matter was adjourned for 28.03.2024 to enable the parties to find an amicable resolution to their dispute.

xi) In the meanwhile, the complainant filed a criminal revision against the order dated 23.02.2024 *vide* which the learned Metropolitan Magistrate had stayed the process under Section 82 CrPC. In the said criminal revision, the learned Additional Sessions Judge *vide* order dated 13.03.2024, taking note of the fact that the anticipatory bail application of the petitioner/accused has been dismissed *vide* order dated 04.03.2024, directed the learned Metropolitan Magistrate to prepone the matter and decide the application moved on behalf of the accused for stay of the proceedings under Section 82 CrPC and/or before the next date fixed before the learned Additional Sessions Judge.

xii) Thereafter, an application for preponement was moved by the complainant before the learned Metropolitan Magistrate, North (Mahila Court-02).

xiii) The learned Metropolitan Magistrate considered the said application on 19.03.2024 along with an application moved on behalf of the investigating officer for vacating the stay under Section 82 CrPC. The learned Metropolitan Magistrate *vide* order of the even date (i.e.,

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07/2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 5 of 26



2024:DHC:5287



19.03.2024), considering the submissions of the learned counsel for the petitioner/accused to the effect that parties are exploring the possibility of out of court settlement through counsels, which submission was also affirmed by the investigating officer, cancelled the process under Section 82 CrPC and disposed of the application of the complainant for preponement, as well as, application of the investigating officer seeking vacation of stay on process under Section 82 CrPC.

xiv) Against the aforesaid order dated 19.03.2024, yet another criminal revision being CR No.86/2024 was filed by the complainant.

xv) The learned Additional Sessions Judge *vide* order dated 23.03.2024 without issuance of notice to the petitioner/accused, set aside the order dated 19.03.2024 passed by the learned Metropolitan Magistrate, whereby the process under Section 82 CrPC had been cancelled. The reason given by the learned Additional Sessions Judge in his order dated 23.03.2024 was that while cancelling the process under Section 82 CrPC, the learned Metropolitan Magistrate had not given any notice to the complainant.

xvi) The order dated 23.03.2024 passed by the learned Additional Sessions Judge in CR.No.86/2024 was challenged by the petitioner/accused by filing a Crl.M.C.2703/2024 under Section 482 CrPC before this Court. This Court *vide* order dated 04.04.2024 set aside the order of the learned Additional Sessions Judge dated 23.03.2024 and remanded back the matter to consider the petition of the complainant afresh and to decide the same within three weeks. It was also directed that an opportunity of hearing be also afforded to the petitioner/accused in accordance with law.

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07/2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 6 of 26



2024:DHC:5287



xvii) After remand, the learned Additional Sessions Judge took up the matter for consideration and passed an order dated 23.04.2024, whereby the order dated 19.03.2024 passed by the learned Metropolitan Magistrate cancelling the process under Section 82 CrPC was set aside. The learned Additional Sessions Judge remanded the matter to the learned Metropolitan Magistrate to reconsider the application of the investigating officer for seeking vacation of stay of the proceedings under Section 82 CrPC, after due notice to both the parties.

xviii) Thereafter, the learned Metropolitan Magistrate *vide* impugned order dated 26.04.2024 vacated the stay on process under Section 82 CrPC which was granted earlier *vide* order dated 23.02.2024. The impugned order is premised on the ground that accused has not joined investigation and no protection has been granted till date by the High Court in the pending anticipatory bail application.

3. Since the application of the investigating officer seeking issuance of NBWs, as well as, the order whereby the NBWs were issued, were not on record, the matter was listed again on 01.07.2024 for seeking clarification. The learned APP for the State was directed to place the said documents on record.

4. On the other hand, learned counsel for the complainant also handed over the order dated 31.05.2024, whereby the petitioner/accused was declared absconder, as well as, the order dated 28.06.2024, whereby direction was given to issue warrants of attachment of moveable property of the petitioner/accused under Section 83 CrPC. The said orders were taken on record.

5. Further arguments were heard and the parties were given opportunity

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19.07.2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 7 of 26



2024:DHC:5287



to file additional submissions.

6. Learned senior counsel for the petitioner submits that NBWs in the present case were issued in tearing hurry. He submits that notices under Section 41A CrPC issued to the petitioner, were prepared consecutively one after another, which is evident from the serial number of notices. Elaborating on his submission, he submits that the FIR was registered on 31.01.2024 and the notices under Section 41A CrPC were given on 03.02.2024 and 05.02.2024. The notice dated 03.02.2024 directed the petitioner/accused to appear before the investigating officer on 04.02.2024. Likewise, the notice dated 05.02.2024 directed the petitioner to appear on 06.02.2024. He submits that on the same day itself i.e. on 06.02.2024 an application was filed by the investigating officer before the concerned Metropolitan Magistrate seeking issuance of NBWs against the petitioner/accused and that too for the purpose of investigation. He submits that under Section 73 CrPC, NBWs cannot be issued in aid of investigation.

7. It is also the contention of the learned senior counsel for the petitioner that even the notice under Section 41A CrPC was served to the mother of the accused.

8. He submits that the NBWs were issued on 06.02.2024 itself i.e. within a period of one week from the registration of FIR on 31.01.2024. He further submits that the petitioner after taking legal advice had filed his anticipatory bail under Section 438 CrPC on 07.02.2024 whereas the process under Section 82 CrPC was issued on 14.02.2024. He submits that the issuance of NBWs within a period of one week, as well as, issuance of process under section 82 CrPC within a period of two weeks, from the date of registration of FIR shows not only the collusion of the police with the complainant, but

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07/2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 8 of 26



2024:DHC:5287



also indicates the misuse of the process of court to set at naught the right of the petitioner to seek anticipatory bail under Section 438 CrPC.

9. He submits that not only the impugned order is liable to be set aside, but in the circumstances of the present case, it is a fit case for exercise of inherent jurisdiction of this Court under Section 482 CrPC to cancel the NBWs and to quash the entire proceedings under Section 82 CrPC.

10. He submits that before the petitioner could appear before the investigating agency, the non-bailable warrants were issued against the petitioner which shows the biasness on the part of the investigating agency.

11. Without prejudice, it is also the contention of the learned senior counsel for the petitioner that the issuance of non-bailable warrants was not preceded by issuance of summons in terms of settled law. In support of his contention, the learned Senior Counsel places reliance on the decision of the Hon'ble Supreme Court in ***Inder Mohan Goswami & Anr. vs. State of Uttaranchal & Ors.: (2007) 12 SCC 1.***

12. *Per contra*, learned APP for the State has opposed the petition of the petitioner/accused. Learned counsel for the complainant submits that the present petition has become infructuous in view of the orders dated 31.05.2024 and 28.06.2024. He submits that since no stay order was passed by this Court, therefore, the learned Metropolitan Magistrate was well within her jurisdiction to pass the order dated 31.05.2024 declaring the petitioner/accused as an absconder and, thereafter, the order dated 28.06.2024 issuing warrants of attachment invoking the jurisdiction under Section 83 CrPC. He submits that the petitioner has shown scant respect to the Courts and law enforcing agency by continuously evading the process. He submits that in view of the provisions of Section 70(2) CrPC every

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07/2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 9 of 26



2024:DHC:5287



warrant shall remain in force until it is cancelled by the court which issued it or until it is executed. He, therefore, urges the Court to dismiss the present petition.

13. It is also the submission of the learned counsel for the complainant that even the application of the petitioner/accused under Section 438 CrPC seeking anticipatory bail cannot be considered since non-bailable warrants were issued against him and the proceedings under Sections 82/83 CrPC were initiated. In support of his submission, learned counsel has placed reliance on the decision of *Srikant Upadhyay & Ors. vs. State of Bihar & Anr.*: 2024 SCC OnLine SC 282.

14. In rejoinder, learned senior counsel for the petitioner submits that the stand of the complainant that the present petition has been rendered infructuous since the subsequent orders dated 31.05.2024 and 28.06.2024 have been passed whereby the petitioner has been declared absconder and warrants of attachment of his moveable property has been issued under Section 83 CrPC respectively, is not tenable under law, inasmuch as it is settled law that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. To buttress his contention, the learned senior counsel for the petitioner has placed reliance on the decision of the *State of Punjab vs. Davinder Pal Singh Bhullar & Ors.*: (2011) 14 SCC 770.

15. I have heard the learned senior counsel for the petitioner, learned APP for the State, as well as, learned counsel for the complainant.

16. It is not in dispute that the FIR in the present case was registered on 31.01.2024. The notice under Section 41A CrPC for the first time was given

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07/2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 10 of 26



2024:DHC:5287



to the petitioner/accused on 03.02.2024 with a direction to him to appear before the investigating officer on 04.02.2024. Again, the second notice was given by the investigating officer on 05.02.2024 with a direction to the petitioner/accused to appear on 06.02.2024. It is a matter of record that both notices were served by the investigating officer on the mother of the petitioner/accused.

17. Incidentally, the investigating officer concerned filed an application before the concerned learned Metropolitan Magistrate on 06.02.2024 specifically alleging that the petitioner/accused didn't join the investigation and that NBWs may be issued against him for the purpose of investigation.

18. Evidently, non-bailable warrants were issued on 06.02.2024 itself i.e. within a period of one week from the registration of FIR. Subsequently, the process under section 82 CrPC was also issued *vide* order dated 14.02.2024 i.e. within a period of two weeks from the registration of case. It is also not the case of the prosecution that prior to the issuance of non-bailable warrants, any process in the form of summons was issued by the court to the petitioner/accused to compel his appearance.

19. At this juncture, it will be apposite to note that the processes to compel appearance have been enumerated in Chapter 6 of the Code of Criminal Procedure, 1973 under four headings in the following sequence:

- (A) Summons - (Sections 61-69)
- (B) Warrant of arrest - (Sections 70-81)
- (C) Proclamation of attachment - (Sections 82-86)
- (D) Other rules regarding processes - (Sections 87-90)

20. The sequence in which the processes to compel appearance have been enumerated is indicative of the intent of legislature that prior to resorting to



an extreme step of issuance of warrant, the court must first resort to issuance of summons to an accused to compel his appearance before the court.

21. The Hon'ble Supreme Court by way of its authoritative pronouncement in ***Inder Mohan Goswami*** (*supra*) has held that issuance of non-bailable warrants should be resorted to only when summons or bailable warrants would be unlikely to yield desired result. The Apex Court also observed that issuance of non-bailable warrants involves interference with personal liberty. Arrest of a person means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuance of non-bailable warrants. The Hon'ble Apex Court while dealing with the question as to when non-bailable warrants should be issued, laid down following guidelines in respect thereof:

“When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or*
- the police authorities are unable to find the person to serve him with a summon; or*
- it is considered that the person could harm someone if not placed into custody immediately.*

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique



motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant.

(emphasis supplied)

22. It is trite law that warrant of arrest under Section 73 of the Code could be issued by the courts solely for the production of accused before the court and not for his production before the police in aid of investigation.¹ This also becomes evident from the reading of Section 76 CrPC which reads as under:

“76. Person arrested to be brought before Court without delay.- The police officer or other person executing a warrant

¹ State through CBI vs. Dawood Ibrahim Kaskar & Ors.: (2000) 10 SCC 438



*of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay **bring the person arrested before the Court** before which he is required by law to produce such person .*

Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

(emphasis supplied)

23. However, a reading of the application filed by the investigating officer on 06.02.2024 before the learned Metropolitan Magistrate seeking issuance of non-bailable warrants shows that he has specifically alleged that the petitioner/accused didn't join investigation so far and is deliberately avoiding to join the investigation. In this backdrop, a prayer was made in the said application that "*NBW may please be issued against accused above for the purpose of investigation.*" Thus, the very purpose for which the investigating officer approached the learned Trial Court for the issuance of non-bailable warrants is contrary to mandate of law. Likewise, the order of issuance of non-bailable warrant by the learned Metropolitan Magistrate has been passed in equally cursory manner. Not only the learned Metropolitan Magistrate failed to issue summons at the first instance and straightaway issued the non-bailable warrants, but the same was done without proper scrutiny of facts and complete application of mind which, as laid down in ***Inder Mohan Goswami*** (*supra*), is absolutely warranted due to the extremely serious consequences and ramifications which ensue on issuance of warrants. Perusal of the order dated 06.02.2024 of the learned Metropolitan Magistrate shows complete non-application of mind given the fact that order issuing non-bailable warrant is a one liner which records "*Heard. NBW issued accused Lakshay for 12/2/24.*"



24. A reading of Section 82 CrPC, which provides for issuance of proclamation also, envisages that before issuance of such proclamation, the court has to record its reasons to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed. However, a perusal of the order dated 14.02.2024 passed by the learned Metropolitan Magistrate whereby issuance of proclamation under Section 82 CrPC has been ordered, also reflects complete non-application of mind. No reason to believe that the petitioner is absconding or concealing himself to avoid execution of warrant has been recorded by the learned Metropolitan Magistrate. The said order simply reads “*heard. Application is allowed. 82 CrPC against accused Lakshay Jaiswal is issued for 28.03.2024*”.

25. Reference in this regard may be had to the decision of the Coordinate Bench of this Court in ***Sunil Kumar vs. State: 2002 (60) DRJ 657*** wherein under identical circumstances it was observed as under:

“5. Mere perusal of the Section 82 shows that before a proclamation can be issued, the court should have reasons to believe (whether after taking evidence or not), that a person against whom a warrant was issued has absconded or is concealing himself and that the warrant cannot be executed. It may be subjective satisfaction but it cannot be totally without any material. Only after recording such satisfaction, the Court can direct the publication of a written proclamation requiring such person to appear at a specified place within the period, not less than 30 days from the date of said publication. Sub-clauses (a), (b) and (c) of clause (i) of sub-section (2) of Section 82 provide that the manner in which proclamation should be published, by reading it in some conspicuous place of the town, by affixing it on some conspicuous part of the court house. Sub-clause (2) also provides that if the court thinks fit, the proclamation can be



published in some daily newspaper, circulating in the place in which such person ordinarily resides. Lastly, Sub-section (3) of Section 82 states that a statement in writing by the court issuing proclamation to the effect that the proclamation was duly published on the specified day in the specified manner in clause (i) of Sub-section (2) would be deemed to be conclusive evidence that the requirements of Section were complied with.

6. Section 83 provides for attachment of property of the person absconding. The court issuing proclamation under Section 82 Cr.P.C. may, for the reasons recorded in writing, at any time after issuing of proclamation, order attachment of any property moveable or immovable or both of the proclaimed person.

7. In this case on 24.9.1996, investigating officer moved an application before trial court stating that non bailable warrants against the petitioner could not be served and prayed for initiation of proceedings under Section 82/83 Cr.P.C. against him. The court passed the following order:-

“Present : I.O. ASI Ram Chander Heard. Report perused. Issue process u/s.82/83 Cr.P.C. against accused for 4-10-1996.”

8. Thereafter on 4.10.1996, investigating officer moved another application that no moveable or immovable assets of the petitioner were found in India, and on that application trial court passed the following order:

“Present : I.O. ASI Ram Chander Heard. Report perused. I am satisfied that accused is deliberately evading the proceedings of court and his arrest. Hence, he is declared P.O.”

(emphasis supplied)

26. It is thus apparent that not only the issuance of non-bailable warrant is illegal and contrary to the mandate of law but the order of issuance of process under Section 82 CrPC also suffers from legal infirmity rendering it unsustainable.



2024:DHC:5287



27. However, in the present petition, the challenge is only to the order dated 26.04.2024, whereby the learned Metropolitan Magistrate vacated the stay of process under Section 82 CrPC granted *vide* order dated 23.02.2024. Thus, the question would arise as to the relief which is to be granted in the present petition regard being had to the fact that after passing of the impugned order, proclamation and attachment proceedings have progressed further and the two subsequent orders came to be passed whereunder the learned Metropolitan Magistrate has declared the petitioner/accused as absconder (*vide* order dated 31.05.2024) and warrants of attachment of his moveable property were issued under Section 83 CrPC (*vide* order dated 28.06.2024).

28. Incidentally, the present petition has been filed under Section 482 CrPC and this Court while exercising its inherent powers under the said provisions cannot shut its eyes if it finds that certain orders passed under the Code, *albeit* not specifically challenged, tantamount to abuse of process of court. It is trite law that under Section 482 CrPC this Court must exercise its inherent powers *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. In exercise of the powers, the Court would be justified to quash any proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. Reference in this regard may be had to the recent decision of the Hon'ble Supreme Court in ***Achin Gupta vs. State of Haryana and Anr.: 2024 SCC OnLine SC 759***. The relevant paras are reproduced hereunder:

“20. It is now well settled that the power under Section 482 of the Cr. P.C. has to be exercised sparingly, carefully and with caution, only



*where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr. P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. **There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.***

*21. The investigation of an offence is the field exclusively reserved for the Police Officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII of the Cr.P.C.. While exercising powers under Section 482 of the Cr. P.C., the court does not function as a Court of appeal or revision. As noted above, the inherent jurisdiction under the Section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. **It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. The authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.**” ...*

(emphasis supplied)

29. The decision of the Hon’ble Supreme Court in ***Davinder Pal Singh Bhullar*** (*supra*) can also be advantageously referred to. It was observed by the Apex Court in the said decision that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. The relevant para



of the said decision reads thus:

“107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim sublato fundamento cadit opus meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

108. In Badrinath v. Govt. of T. N. and State of Kerala v. Puthenkavu N.S.S. Karayogam this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.

109. Similarly in Mangal Prasad Tamoli v. Narvadeshwar Mishra this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

110. In C. Albert Morris v. K. Chandrasekaran this Court held that a right in law exists only and only when it has a lawful origin. (See also Upen Chandra Gogoi v. State of Assam, Satchidananda Misra v. State of Orissa, SBI v. Rakesh Kumar Tewari and Ritesh Tewari v. State of U.P.)”

(emphasis supplied)

30. There is another aspect of the matter which also needs to be addressed. Learned counsel for the complainant has relied upon the decision of ***Srikant Upadhyay*** (*supra*), to contend that once non-bailable warrant is issued against an accused, the courts ought not to entertain the anticipatory bail application of an accused. In this regard, reference was made to the following paragraphs of the judgment:

“21. We are in full agreement with the view taken by the Gujarat High Court that filing of an anticipatory bail through



*an advocate would not and could not be treated as appearance before a court by a person against whom such proceedings, as mentioned above are instituted. The meaning of the term “absconded” has been dealt by us hereinbefore. We found that its etymological and original sense is that the accused is hiding himself. What is required as proof for absconding is the evidence to the effect that the person concerned was knowing that he was wanted and also about pendency of warrant of arrest. A detailed discussion is not warranted in this case to understand that the appellants were actually absconding. **It is not in dispute that they were served with the “summons”. The fact thatailable warrants were issued against them on 12.04.2022 is also not disputed, as the appellants themselves have produced the order whereunderailable warrants were issued against them...***

XXXX

XXXX

XXXX

XXXX

*25. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. **We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying***



2024:DHC:5287



orders and keep absconding is not entitled to such grant.”

(emphasis supplied)

31. The observation made by the Hon'ble Supreme Court in ***Srikant Upadhyay*** (*supra*) were made in the context of the facts of that case where the accused persons had failed to appear for approximately 7 months before the Trial Court despite giving them several opportunities and repeated summons/bailable warrants. Without going into the aspect whether the law laid down in ***Srikant Upadhyay*** (*supra*) is applicable to the fact situation of this case, it needs to be observed that if the legal position is that the accused person is not entitled to invoke the extraordinary power of the Court to grant anticipatory bail after the issuance of non-bailable warrants or proclamation, it is all the more reason for the learned Magistrate to be cautious while issuing non-bailable warrants or resorting to the provisions of proclamation and attachment. The right of an accused to seek anticipatory bail under Section 438 CrPC is a statutory right which enables him to protect his personal liberty as guaranteed to him under the Constitution of India. Such a right cannot be set at naught by the investigating officer by procuring non-bailable warrants against an accused immediately within few days after the registration of a criminal case when the investigation is at a nascent stage and the accused hardly had sufficient time to seek professional advice and apply for pre-arrest bail. Even the facts of ***Srikant Upadhyay*** (*supra*) suggest that in the said case as well, the Court had first issued summons to the accused, then bail warrants were issued and only as last resort the court issued non-bailable warrants and that too after more than a year of taking cognizance of the offences.

32. In view of the above discussion, it is a fit case for this Court to

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07/2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 21 of 26



2024:DHC:5287



exercise its inherent jurisdiction under Section 482 CrPC and to quash the order dated 06.02.2024, whereby the non-bailable warrant was issued against the petitioner/accused, as well as, the order dated 14.02.2024 whereby the process under Section 82 CrPC was issued. Ordered accordingly. The non-bailable warrant thus, stands cancelled. Resultantly, all subsequent proceedings including the impugned order and the order dated 31.05.2024, whereby the petitioner/accused was declared absconder, as well as, the order dated 28.06.2024, whereby the warrants of attachment have been issued *qua* the moveable property of the petitioner, will not survive and are accordingly, quashed and set aside.

33. The petition stands disposed of in the above terms.

34. The petitioner is directed to appear before the learned Trial Court on 26.07.2024.

BAIL APPLN. 893/2024

35. This is an application filed by the petitioner under Section 438 CrPC seeking anticipatory bail in connection with FIR No.0076/2024 under Sections 354B/506/509 IPC registered at PS Model Town, Delhi.

36. The case of the prosecution as borne out from the FIR is that the petitioner/accused, who resides on the first floor of the building in which the complainant also lives, habitually talks to the complainant in an abusive language and also pelts stones at her. On the day of the incident, when the complainant was alone at her house, the petitioner/accused hurled abuses at her and tried to physically assault her. The complainant tried to escape and ran outside the house, towards the road. The petitioner/accused followed her and pulled her hair, punched her and also hit her on the chest. The petitioner/accused then proceeded to toss the complainant down on the road



2024:DHC:5287



and kicked her. It is alleged that the clothes of the complainant also got torn during the incident. The complainant had, in the past, filed various other complaints against the petitioner/accused as well on similar grounds.

37. Learned senior counsel for the petitioner submits that the present FIR was registered on 31.01.2024. However, the date of occurrence has been mentioned as 25.01.2024. He submits that there is an unexplained delay of six days in the registration of FIR. He further submits that the allegations in the FIR are that the petitioner/accused had abused the complainant in filthy language outside her house on the road, but no date and time of incident has been stated in the FIR. He submits that it is the specific case of the prosecution that the incident had taken place outside the residential building where both the accused and the complainant live and the said place of the alleged incident is covered by various CCTV cameras installed outside the building, but no CCTV footage has been placed on record by the prosecution.

38. He submits that it is also an allegation in the FIR that scuffle ensued between the petitioner/accused and the complainant wherein the clothes of the complainant were torn but the said torn clothes of the complainant were not seized by the investigating officer. On the other hand, the petitioner's father has produced the CCTV footage of the alleged date of incident, i.e., 25.01.2024, which shows that on the said day the complainant had not even stepped out of her house all day and the said fact is also confirmed by the State premised on the said CCTV footage.

39. He submits that it is also alleged in the FIR that the complainant had earlier made 2-3 complaints against the petitioner and his family members, but no such complaint has been referred to by the State in the status report.

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07/2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 23 of 26



2024:DHC:5287



He submits that the complainant has not provided any CCTV footage of 25.01.2024 to the investigating officer though CCTV camera is installed at her house.

40. He further submits that the petitioner got married on 25.04.2024 i.e. after the registration of FIR and has also shifted his residence, therefore, there is no reason for the complainant to have apprehension of any sort of threat from the petitioner. He submits that the petitioner will join the investigation and abide by any conditions that may be imposed while granting bail to him.

41. He further submits that the present complaint is absolutely false and a counterblast to the complaints made by the accused and his family to the present FIR. He, therefore, urges the Court that the petitioner may be granted anticipatory bail.

42. *Per contra*, learned APP for the State has argued on the lines of the status report. Learned counsel for the complainant has also opposed the bail application on the ground that the allegations against the petitioner/accused are serious. He also submits that the complainant is staying in the same building along with her husband and both are senior citizens and because of the unruly behaviour of the petitioner it has become difficult for the complainant and his family to stay there.

43. He submits that the notices under Section 41A CrPC were also given to the petitioner/accused by the investigating officer but he did not join the investigation. He further submits that non-bailable warrants have been issued against the petitioner and the proceedings under Section 82 CrPC have been initiated against him, therefore, in view of the judgment of the Hon'ble Supreme Court in **Srikant Upadhyay** (*supra*), the present bail

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07/2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 24 of 26



2024:DHC:5287



application ought to be dismissed.

44. I have heard the learned senior counsel for the petitioner, learned APP for the State and the learned counsel for the complainant.

45. It is not in dispute that the petitioner and the complainant are neighbours, who are staying in the same building and cross complaints have also been made by the petitioner against the complainant and her family members.

46. There is also substance in the statement made by the learned senior counsel for the petitioner that there is a six days delay in registration of FIR which has not been plausibly explained. On being queried by the Court, the learned APP for the State, on instructions from the investigating officer, fairly conceded that no seizure of torn clothes of the complainant were made up until 16.02.2024, i.e. after a delay of 16 days from the date of FIR. On further being queried, the learned APP, on instructions, fairly states that the CCTV footage covering the entry and exit point of the residence of the petitioner, as well as, the complainant, which was provided by the father of the petitioner/accused to the investigating officer, shows that the complainant did not come out of her residence on 25.01.2024, the alleged date of incident.

47. Insofar as the issuance of notices under Section 41A CrPC are concerned, to be noted that the notices were served on the mother of the petitioner/accused and further hardly any time was given by the investigating officer to the accused to appear inasmuch as on the same date fixed for the appearance of petitioner/accused i.e. 06.02.2024 in the second notice, the non-bailable warrants were procured by the investigating officer which raises doubt about the fairness of the investigating officer.

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07/2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 25 of 26



2024:DHC:5287



48. In regard to the submission that the present petition ought to be dismissed for the reason that the non-bailable warrants and the process under Section 82 CrPC has been issued, suffice it to say that the orders issuing non-bailable warrants and the process under Section 82 CrPC and all subsequent proceedings have been quashed by this Court by an aforesaid order of an even date.

49. In view of the above, the petitioner has made out a case for grant of anticipatory bail. Accordingly, the application is allowed and it is directed that in the event of petitioner's arrest, he be released on bail subject to his furnishing Personal Bond in the sum of Rs. 30,000/- and a Surety Bond of the like amount to the satisfaction of the Arresting Officer/SHO, further subject to the following conditions:

- i) The petitioner shall join the investigation as and when called by the investigating officer concerned.
- ii) The petitioner shall not tamper with the evidence or threaten the complainant or any other witness.

50. The application stands disposed of.

51. Order *dasti* under signatures of the Court Master.

52. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

JULY 18, 2024
MK

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 19/07/2024
11:12:51

CRL.M.C.3952/2024 & BAIL APPLN. 893/2024

Page 26 of 26