

03.12.2025

Court No.29

Item.416

D/L

(Srimanta)

IA No.:CRAN/3/2025

in

CRR/487/2025

In the matter of: **Anisur Rahaman**

.....petitioner.

Mr. Milon Mukherjee, Sr. Adv.,

Mr. Biswajit Manna

...for the petitioner.

Mr. Rudradipta Nandy

...for the State.

1. This is an application wherein the petitioner has challenged the impugned order dated 13.12.2024 by which the Court below had issued warrant of proclamation and warrant of attachment simultaneously against the present petitioner.

2. Being aggrieved by the aforesaid order Mr. Mukherjee, Learned Counsel for the petitioner submits that the order is vexatious, mala fide and without application of any judicial mind. He further pointed out Section 84 of the BNSS provides that an accused should be given at least 30 days time to appear before the order issuing Court. However, in the instant case, the entire report was submitted within 30 days and the attachment report within 10 days and therefore the order per se is illegal and as such the order is liable to be set aside.

3. Learned Counsel for the State opposed the prayer and contended that only proclamation order can be retained as has been passed by the Court below.

4. Having heard the Learned Counsel for the petitioner and the State it appears that Court below received charge-sheet against accused/petitioner on 08.12.2024 and fixed next day for physical production of accused persons who are behind the bar and execution report of warrant of arrest against the rest including the present petitioner. Thereafter on 10.12.2024 Court received non-execution report in respect of petitioner and some other accused persons. On the very next day, on the basis of the prayer made by investigating officer for issuing proclamation and attachment, the Court below allowed such prayer and issued warrant of proclamation and warrant of attachment simultaneously by the impugned order, without recording his satisfaction and/or reason to believe about his absconding.

5. The words in Section 84 of BNSS "*Court has reason to believe whether after taking evidence or not...*" implies that an order of proclamation or attachment or both cannot be passed as a matter of course. Before issuing proclamation Court must satisfy himself that the officer sent to serve the warrant could not execute it as the accused is hiding himself. If the Magistrate is satisfied that the accused is absconding or concealing then and then only the process

of proclamation or attachment may be issued. An absent person should not be readily assumed to be an absconder without due inquiry and notice and under the procedure laid down in Section 84, such Court may publish a written proclamation requiring the appearance of that person at a specified place and at a specified time, not less than 30 days from the date of publishing the proclamation.

6. Coming back to the instant case it appears that Court below failed to record his reason to belief why the accused/petitioner can be declared as proclaimed offender. Furthermore Section 85 of BNSS as it now stands does not authorize simultaneous issue of the order of proclamation and attachment except in the circumstances mentioned in the proviso to sub-Section (1). The uncontroverted legal position is that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all.

7. To lay a foundation for the issue of a proclamation under Section 84 with an accompanying order of attachment under Section 85, it is necessary strictly to comply with provisions of law as laid down in both the Sections. The object of Section 84 and 85 of BNSS is not to punish the absconder. That apart simultaneous issuance of warrant of proclamation and warrant of attachment is ex-facie contradictory because only after the first, the second can be issued,

where accused is absconding, unless it attracts a situation laid down in proviso to Sub-Section (1).

8. Since in the instant case mandatory provisions of Section 84 and 85 of BNSS was not complied with, the simultaneous issuance of warrant of proclamation and warrant of arrest in absence of a situation mention in Sub-Section (1) is liable to be set aside.

9. CRR/487/2025 is, accordingly, allowed. The impugned order dated 13.12.2024, so far it relates to simultaneous issuance of warrant of proclamation and warrant of attachment are hereby set aside.

10. However, this order will not precluded the Trial Court to issue warrant of proclamation and/or warrant of attachment strictly following the law laid down in Section 84 and Section 85 of the BNSS in order to secure attendance of the absconding accused following his reason to believe that the accused person is intentionally avoiding the process of the Court.

(Ajoy Kumar Mukherjee, J.)