

9.12.2025
23
SB

CRR 4840 of 2025

**Tapas Dey & Anr.
Vs.
The State of West Bengal**

Mr. Abhra Mukherjee	
Mr. Sauradeep Dutta	
Ms. Reshmi Khatun	...for the Petitioners
Mr. Suman De	...for the State

Mr. Suman De, learned counsel who usually appears before this court on behalf of the State, is hereby appointed to represent the State. The concerned authority is directed to regularize his appointment.

This is an application wherein the petitioners have challenged the order dated 29.8.2025 passed in S.L. no. 2607 of 2025, presently pending before the learned Sessions Judge, Nadia. By the impugned order, learned court below issued warrant of proclamation and warrant of attachment simultaneously against the two petitioners.

Being aggrieved by the aforesaid order, learned counsel for the petitioners submits that issuance of warrant of proclamation and warrant of attachment simultaneously by the impugned order is bad in law as the court below failed to record any satisfaction as to why simultaneous issuance of warrant of proclamation and attachment against the two petitioners became necessary. He further submits that in order to issue of warrant of proclamation and attachment

simultaneously, the court below is required to adhere to the legal requirement as envisaged under Section 84,85 and 87 of the BNSS. In the instant case, the warrant of proclamation and attachment issued with undue haste and without subjective satisfaction. In fact, Section 84 of the BNSS mandates that the jurisdictional court shall issue a proclamation against an accused only when it has reason to believe that the accused against whom an arrest warrant has been issued, has absconded or is concealing himself so that the warrant could not be executed. It is not the matter of course that as soon as the prayer would be made by the prosecution, the court below will be obliged to declare an accused as absconder. Furthermore, simultaneous issuance of both the warrants can only be made when there appears to be reasonable belief that the petitioners are going to surreptitiously disposed of, property, in respect of which the proclamation and/or attachment has to be issued. Therefore, he prayed for setting aside the order impugned.

Learned counsel for the State leaves the prayer made by the petitioners to the discretion of the court.

Having heard learned counsel for the petitioners and the learned counsel representing the State and also on perusal of the order impugned, it appears that the issuance of simultaneous warrant of proclamation and attachment is not in compliance with the proviso to Section 85 of the BNSS and from the impugned order, it does not reflect, what prompted the Magistrate to issue both the warrants simultaneously when

there is apparently nothing to show that there exists any allegation that the petitioners are going to dispose of the property, which would be the subject matter for proclamation or attachment.

It is well-settled that section 85 does not authorize simultaneous issue of the order of proclamation and attachment. Only in the circumstances mentioned in proviso to sub-section(1), the court is authorized to issue the order of proclamation and attachment simultaneously. Where proclamation issued under section 84 is invalid, no valid attachment of property under section 85 of BNSS can be made.

In such circumstances, the impugned order dated 29.8.2025 is suffering from impropriety and perversity and for which, the order impugned is set aside.

However, this order will not preclude the court below to declare the petitioners as an absconder or to issue warrant of proclamation or to issue warrant of attachment or both if situation demands but strictly in compliance with the procedure laid down in Section 84 and 85 of the BNSS.

CRR 4840 of 2025 is accordingly disposed of.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)