IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1261 of 2019

Awdhesh Prasad Tripathi @ A.P. Tripathy, aged about 60 years, s/o late Bikrame Prasad Tripathi, resident of C/o Recovery Officer, ESI Corporation, Panchdeep Bhawan, P.O., P.S.-Jawaharlal Nehru Marg, Dist.-Patna

.... Petitioner

Versus

1. The State of Jharkhand
2. Govind Prasad Dalmia, s/o late Gouri Shankar Dalmia, r/o Dalmia House, P.O., P.S. -Jasidih, Sub Division & Dist.-Deoghar

…. Opp. Parties

With

Cr.M.P. No. 2005 of 2019

Pramod Kumar Srivastava, s/o Onkar Prasad Srivastava, aged about 65 years, r/o 456 Turkmanpur, Opp. Naik Hata, Rawat Pathshala, P.O., P.S. & Dist.-Gorakhpur, Uttarpradesh

.... Petitioner

Versus

1. The State of Jharkhand
2. Govind Prasad Dalmia, s/o late Gouri Shankar Dalmia, r/o Dalmia House, P.O., P.S. -Jasidih, Sub Division & Dist.-Deoghar

…. Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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For the Petitioners : Mr. Anil Kumar Sinha Advocate
For the State : Mrs. Nehala Sharmin, Spl. P.P.
For O.P. No.2 : None

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By the Court:-

I.A. No.5244 of 2026 (in Cr.M.P. No. 2005 of 2019)

1. Heard the parties.

2. Learned counsel for the petitioners submits that this interlocutory application has been filed with the prayer to delete the name of the petitioner no.1-Ram Naresh Ram from the cause title as he died on 22.01.2026.

3. Learned Spl. P.P. has no objection.

4. Considering the aforesaid fact, the prayer is allowed.

5. Registry is directed to delete the name and particulars of the petitioner no.1- Ram Naresh Ram and renumber the present petitioner no.2 as the sole petitioner in the cause title of this criminal miscellaneous petition with red ink.

6. This interlocutory application is disposed of accordingly.

(Anil Kumar Choudhary, J.)

Cr.M.P. No. 1261 of 2019 with Cr.M.P. No. 2005 of 2019

1. Heard the parties.

2. Though notice has been validly served upon the opposite party no.2 of both these criminal miscellaneous petitions, yet no one turns up on behalf of the opposite party no.2 in-spite of repeated calls.

3. Since, both these Criminal Miscellaneous Petitions have been filed with the same prayer to quash the order dated 29.11.2005 whereby and where under, bailable warrant of arrest was directed to be issued, order dated 28.02.2007 whereby and where under, non-bailable warrant of arrest was directed to be issued, order

dated 06.09.2007 whereby and where under, warrant of arrest and process under Section 82 of Cr.P.C. was directed to be issued, order dated 24.07.2010 whereby and where under, bailable warrant of arrest was directed to be issued, order dated 21.04.2011 whereby and where under, non-bailable warrant of arrest was directed to be issued, order dated 10.06.2013 whereby and where under, process under Section 82 and 83 of Cr.P.C. were directed to be issued and order dated 05.09.2013 whereby and where under, the petitioners have been declared proclaimed offender and record was consigned to the record room and all such orders have been passed by the learned Judicial Magistrate 1st Class, Deoghar in connection with P.C.R. Case No. 518 of 2002. Hence, these two criminal miscellaneous petitions are disposed of by this common judgement.

4. At the outset, the learned counsel for the petitioners submits that in both the cases, the petitioners though have also prayed to quash all the proceedings in relation to P.C.R. Case No. 518 of 2002 but the petitioners do not press the said prayer.

5. Accordingly, the prayer of the petitioners to quash all the proceedings in relation to P.C.R. Case No. 518 of 2002 is rejected as not pressed.

6. Learned counsel for the petitioners submits that the learned Judicial Magistrate 1st Class, Deoghar has committed a grave illegality by passing the order dated 29.11.2005 in the said case for

issue of bailable warrant of arrest upon the accused persons of the case, including the petitioners, without receipt of the service report of the summons to the petitioners; hence, the same is not sustainable in law. It is next submitted by the learned counsel for the petitioners that vide order dated 06.09.2007 passed in the said case, the learned Judicial Magistrate 1st Class, Deoghar has directed to issue warrant of arrest and the proclamation under Section 82 of Cr.P.C. without recording any satisfaction that the petitioners are evading their arrest and withing fixing any time and place for appearance of the petitioners hence, the same is also not sustainable in law. It is further submitted by the learned counsel for the petitioners that the orders dated 28.02.2007 and 21.04.2011 passed in the said case is not sustainable in law as the same has been passed by the learned Judicial Magistrate 1st Class, Deoghar without recording any satisfaction that the petitioners are evading their arrest. It is then submitted by the learned counsel for the petitioners that vide order dated 24.07.2010 passed in that case again though, it has categorically been mentioned in the order itself, that the service report of the summons issued to the petitioners have not been received back, but still, again bailable warrant of arrest has been ordered to be issued, therefore, the same is also not sustainable in law. It is next submitted by the learned counsel for the petitioners that vide order dated 10.06.2013 passed in the said case, without recording any

satisfaction that the petitioners are absconding or concealing themselves to evade their arrest or about to dispose of the whole or any part of the property or about to remove the whole or any part of the property from the jurisdiction of the court, simultaneously the process under Section 82 of Cr.P.C. as well as the attachment order of the property under Section 83 of Cr.P.C. has been issued, therefore the said order is also not sustainable in law. It is further submitted by the learned counsel for the petitioners that vide order dated 05.09.2013 in the said case, the learned Judicial Magistrate 1st Class, Deoghar ordered for issue of the permanent warrant of arrest without recording any satisfaction that there is no immediate prospect of arresting the petitioners and without there being any material in the record to suggest that there is no immediate prospect for arresting the petitioners, as neither the service report of the summons issued to the petitioners were ever received back, nor the execution report of the bailable warrant of arrest issued against them has been returned by the police nor there being any material in the record to suggest that the proclamation under Section 82 of Cr.P.C. was ever made. Hence, it is submitted that all the aforesaid orders being not sustainable in law be quashed and set aside.

7. Learned Special Public Prosecutor on the other hand opposes the prayer to quash the said orders and submits that the very fact that the learned Judicial Magistrate 1st Class, Deoghar has issued the

bailable warrant of arrest, non-bailable warrant of arrest, proclamation under Section 82 of Cr.P.C., attachment order of the property under Section 83 of Cr.P.C. and the order declaring the petitioners to be absconder itself shows that there were materials available in the record for the learned Judicial Magistrate 1st Class, Deoghar to be satisfied that there is justification for issuance of such bailable warrant of arrest, non-bailable warrant of arrest, proclamation under Section 82 of Cr.P.C., attachment order of the property under Section 83 of Cr.P.C. and the order declaring the petitioners to be absconder. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

8. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that since the learned Judicial Magistrate 1st Class, Deoghar in P.C.R. Case No. 518 of 2002 ordered for issue of summons to the petitioners so it was incumbent upon the learned Judicial Magistrate 1st Class, Deoghar to ensure that service report of the summons is received back before passing the order for issue of the bailable warrant of arrest but having not done so, in the absence of service report of the summons issued to the petitioners being received back in the record, vide order dated 29.11.2005 having ordered for issue of bailable warrant of arrest, this Court has no hesitation in holding that the same is not sustainable in law. Accordingly, the order dated 29.11.2005 passed by the learned Judicial Magistrate 1st

Class, Deoghar in connection with P.C.R. Case No. 518 of 2002 is quashed and set aside.

9. So far as the order dated 06.09.2007 passed in the said case is concerned, the learned Judicial Magistrate 1st Class, Deoghar without recording any satisfaction that the petitioners are evading their arrest or fixing any time or place for appearance of the petitioners having simultaneously issued warrant of arrest as well as process under Section 82 of Cr.P.C., the same is also not sustainable in law. Accordingly, the order dated 06.09.2007 passed by the learned Judicial Magistrate 1st Class, Deoghar in connection with P.C.R. Case No. 518 of 2002 is quashed and set aside.

10. So far as the order dated 24.07.2010 passed in the said case is concerned, in the order itself, it has been mentioned that the service report of the summons issued to the accused persons of the case who are the petitioners herein, have not been received back; but still, having passed orders for issue of bailable warrant of arrest, for the reasons as mentioned in the foregoing paragraphs of the judgment, the same is also not sustainable in law. Accordingly, the order dated 24.07.2010 passed by the learned Judicial Magistrate 1st Class, Deoghar in connection with P.C.R. Case No. 518 of 2002 is quashed and set aside.

11. So far as the orders dated 28.02.2007 and 21.04.2011 passed in the said case is concerned, by both the said orders, the non-bailable warrant of arrest has been issued against the accused persons of

the case who are the petitioners herein without recording any satisfaction that the petitioners are evading their arrest. As per Section 73 of Code of Criminal Procedure, the Magistrate is empowered to direct warrant inter alia against the person accused of committing non-bailable offence and evading arrest.

12. Now coming to the said orders dated 28.02.2007 and 21.04.2011, the learned Judicial Magistrate 1st Class, Deoghar has not recorded any satisfaction that the petitioners are evading their arrest and without recording such satisfaction having ordered for issue of non-bailable warrant of arrest against the accused persons of the case; who are the petitioners herein, this Court is of the considered view that both the said orders are not sustainable in law. Accordingly, the orders dated 28.02.2007 and 21.04.2011 passed by the learned Judicial Magistrate 1st Class, Deoghar in connection with P.C.R. Case No. 518 of 2002 is quashed and set aside.

13. So far as the order dated 10.06.2013 passed in the said case is concerned, by the said order, simultaneously the process under Section 82 of Cr.P.C. as well as the attachment order of the property of the accused person of the case, who are the petitioners herein has been made, it is pertinent to mention here that simultaneously the attachment order of the property along with proclamation can only be made if the Court is satisfied by affidavit or otherwise that the person in relation to whom the proclamation is to be issued is about to dispose of the whole or

any part of the property or is about to remove the whole or any part of the property from the local jurisdiction of the Court concerned.

14. Now coming to the facts of the case, there is absolutely no material to suggest nor there is any satisfaction recorded by the learned Judicial Magistrate 1st Class, Deoghar that the accused person of the case who are the petitioners herein are about to dispose of the whole or any part of the property or about to remove the whole or any part of the property from the local jurisdiction of the Court. Further, the learned Judicial Magistrate 1st Class, has also not recorded any satisfaction that the petitioners are absconding or concealing themselves to evade their arrest nor fixed any time or place for appearance of the accused persons of the case in the said order, by which the proclamation under section 82 of the Code of Criminal Procedure was also directed to be issued. Hence, the order dated 10.06.2013 is also not sustainable in law. Accordingly, the order dated 10.06.2013 passed by the learned Judicial Magistrate 1st Class, Deoghar in connection with P.C.R. Case No. 518 of 2002 is quashed and set aside.

15. So far as the order dated 05.09.2013 is concerned, it is a settled principle of law that before exercising the power under Section 299 of Cr.P.C., it is necessary that all conditions prescribed must be strictly complied with namely the court must be satisfied that the accused has absconded or that there is no immediate prospect

of arresting him, as has been held by the Hon'ble Supreme Court of India in the case of **Nirmal Singh vs. State of Haryana**, reported in **(2000) 4 SCC 41**.

16. Now coming to the facts of the case, in the order itself it has been mentioned that neither the service report of the summons nor any execution report of the bailable warrant of arrest, non-bailable warrant of arrest nor any report that proclamation under Section 82 of Cr.P.C. was ever made was ever made nor attachment of the property of the petitioner having ever been made is available in the record but still in the absence of any material in the record to suggest that the petitioners have absconded or that there is no immediate prospect of arresting them, still the learned Judicial Magistrate 1st Class, Deoghar having declared the petitioners to be absconder and having issued permanent warrant of arrest against them and passing order to consign the record to the record room, in the considered opinion of this Court, the learned Judicial Magistrate 1st Class, Deoghar has committed a grave illegality and a patent perversity hence, this Court is of the considered view that the order dated 05.09.2013 passed by the learned Judicial Magistrate 1st Class, Deoghar in connection with P.C.R. Case No. 518 of 2002 being not sustainable in law be quashed and set aside.

17. Accordingly, the order dated 05.09.2013 passed by the learned Judicial Magistrate 1st Class, Deoghar in connection with P.C.R. Case No. 518 of 2002 is quashed and set aside.

18. The learned Judicial Magistrate 1st Class, Deoghar or its successor court may pass a fresh order in accordance with law.

19. In the result, these criminal miscellaneous petitions are allowed to the aforesaid extent only.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 7th May, 2026
AFR/Gunjan/-

Uploaded on 11/05/2026