

Reserved

Case :- U/S 482/378/407 No. - 2261 of 2021

**Petitioner :- Kunwar Mahendra Pratap Singh
@ Chandan Singh**

Opposite Parties :- State Of U.P. & Ors.

**Counsel for Petitioner :- Mr S.P. Singh
"Somvanshi"**

**Counsel for Opposite Party :- Government
Advocate**

Hon'ble Mrs. Saroj Yadav,J.

1. This petition under Section 482 of The Code of Criminal Procedure, 1973 (in short "Cr.P.C.") has been filed by the petitioner to quash the non-bailable warrant (in short "NBW") dated 08.06.2021 issued by the Chief Judicial Magistrate, Ayodhya as well as the order dated 02.07.2021 issued under Section 82 Cr.P.C. against the petitioner in Case Crime No. 107 of 2021, under Section 60-A, 60 of Excise Act and Sections 302, 307, 120B, 419, 420, 467, 468, 471, 472 and 34 of the Indian Penal Code, 1860 (in short "I.P.C.", Police Station Gosaiganj,

District Ayodhya. A further prayer has been made to direct the opposite parties no. 2 & 3 not to arrest the petitioner in pursuance of the aforesaid orders.

2. Heard Sri S.P. Singh Somvanshi, learned counsel for the petitioner and Sri Vipul Gupta, learned Additional Government Advocate appearing on behalf of the State.

3. Learned counsel for the petitioner submitted that the Chief Judicial Magistrate has no power to issue NBW as well as proclamation under Section 82 Cr.P.C. against the petitioner in a routine manner. The case is under investigation, so the Court has no ground to issue NBW as the Investigating Officer himself has power to arrest without warrant. The Magistrate concerned has issued NBW and proceeding under Section 82 Cr.P.C. in a routine manner without applying its legal mind. In support of his contentions, he has relied upon the following case laws:-

(i) **Raghuvansh Dewanchand Bhasin Versus State Of Maharashtra & Anr, AIR 2011 SC 3393,**

(ii) **Piyush Verma Versus The State of Jharkhand, Cr. M.P. No. 435 of 2019,**

(iii) **Gurjeet Singh Johar Versus State of Punjab & another, 2019 SCC On-line P&H 2606.**

4. On the other hand, learned A.G.A. opposed the submissions advanced by the learned counsel for the petitioner and submitted that if the person wanted in a crime evades arrest, then the Investigating Officer seeks the help of the Court to arrest the accused and complete the investigation. Hence, there is no illegality in the order issuing NBW and proclamation under Section 82 Cr.P.C. Hence, this petition should be rejected.

5. The record shows that the First Information Report (in short "F.I.R.") No. 107/2021 was registered at Police Station Gosaiganj, District Ayodhya. It has been stated in the F.I.R. that Dharmendra Kumar Verma, the son of the

complainant died on 01.04.2021 while on the way to Lucknow for his treatment. The deceased became ill as he consumed toxicated liquor on 30.03.2021 at the place of Rajnath Verma. He was sent to Hospital at Gosaiganj from where he was sent to District Hospital, thereafter he was referred to Lucknow for better treatment but he died while on the way. The extract of case diary, which has been filed along with this petition shows that the case is being investigated under Section 60-A, 60 of Excise Act and Sections 302, 307, 120B, 419, 420, 467, 468, 471, 472 and 34 IPC.

6. During investigation, the Investigating Officer moved an application before the concerned Magistrate for issuance of NBW against the accused person and proceeding under Section 82 Cr.P.C. as the accused is evading the arrest. The Magistrate passed the order accordingly.

7. Submission of the learned counsel for the petitioner is that the Magistrate is not empowered to issue such warrant and proceeding under Section 82 Cr.P.C. In support of his argument, he relied upon the above quoted case laws.

8. The case law **Raghuvansh Dewanchand Bhasin Versus State of Maharashtra and Another (Supra)** is a case where the petitioner an Advocate, was arrested despite of the fact that his NBW was cancelled by the competent Magistrate but the erring Officer did not get the order of cancellation of warrant and he arrested him. In the present case, the situation is entirely different. In other case, **Piyush Verma Versus The State of Jharkhand (Supra)** also is of no help to the petitioner as that relates to a case in which the trial is going on before the Court. Here in the present matter, investigation is being carried out. Next case i.e. **Gurjeet Singh Johar**

Versus State of Punjab & another (Supra) is also of no help to the petitioner.

9. As far as the legal position is concerned, if the accused evades the arrest during the investigation, no doubt the Investigating Officer has power to arrest the accused without warrant, if the offence is cognizable one, but for issuance of proceeding under Section 82 Cr.P.C., the investigating officer has to seek help of the Court and only under the orders of the Court, proclamation under Section 482 Cr.P.C. can be issued.

Section 82(1) Cr.P.C. runs as under:-

"82(1). Proclamation for person absconding--If any Court has reason 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, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation."

10. Section 82(1) Cr.P.C. clearly shows that before issuance of proclamation under Section 82

Cr.P.C. issuance of NBW is necessary because Section 82 Cr.P.C. itself says that "if the Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself", hence the issuance of NBW before proclamation under Section 82 Cr.P.C is necessary. In the present matter, the investigation is going on, wherein a person died by consuming toxic liquor and the petitioner is wanted for the investigation. But it is also important that Magistrate should not pass such order in a routine manner, on the simple application of the Investigating Officer. The application should be supported by an affidavit of the Investigating Officer stating the reasons why NBW and proclamation under Section 82 Cr.P.C. is required, as the issue relates to the personal liberty of a person guaranteed under Article 21 of the Constitution of India.

11. Considering all these facts, the petitioner is directed to appear before the Investigating Officer for investigation purposes or surrender before the Court concerned, if wanted in the concerned case, within seven days from today, if not already arrested or surrendered. For a period of seven days from today, the implementation of impugned order shall remain stayed.

12. In view of the aforesaid observation and direction, the present petition is disposed of.

Order Date :- 18.8.2021

Arun

(Saroj Yadav, J.)