

**Court No. - 11**

**Case :-** APPLICATION U/S 482 No. - 1974 of 2023

**Applicant :-** Purushottam Chaudhary

**Opposite Party :-** Central Bureau Of Investigation Thru. The Superintendent Of Police Cbi/Acb Lko.

**Counsel for Applicant :-** Pranshu Agrawal

**Counsel for Opposite Party :-** Anurag Kumar Singh

**Hon'ble Rajesh Singh Chauhan,J.**

1. Heard Sri P. Chakravarty and Sri Pranshu Agarwal, learned counsel for the applicant and Sri Anurag Kumar Singh, learned counsel for the C.B.I.

2. By means of this application the applicant has prayed for quashing of the impugned order dated 24.1.2023 by means of which Non-Bailable Warrant was ordered to be issued and also for quashing the order dated 08.02.2023 by means of which Non-Bailable Warrant as well as the process u/s 82 Cr.P.C. was ordered to be issued by the Court of Special Judge, CBI, Court No. 2, Lucknow in Criminal Case No. 01/2023, C.B.I. vs. Bhagwati Prasad Verma and others, arising out of R.C. No. 8(A)/2014, u/s 120B/409, 420, 511 IPC and section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, P.S. CBI / ACB, Lucknow.

3. At the very outset learned counsel for the applicant has drawn attention of this Court towards the order dated 10.1.2023 whereby the learned trial court has issued bailable warrant against the applicant presuming that despite the summons having been served upon him he did not appear. Learned counsel for the applicant has submitted that summon has not been served on the petitioner in terms of section 64 Cr.P.C. which provides that if the person whose presence is required in the Court is not present in the house such summon should be served upon any male member of the family but the same has been served upon one female member of the family. If it is presumed for the argument sake that such summon has been served on the family member (Bhabhi) of the applicant and the petitioner did not appear on

that summon the learned trial court may issue summons against him but on the basis of presumption that same has been served on the applicant through his relative theailable warrant should not have been issued against him as this exercise is in derogation of section 64 Cr.P.C.

4. Further, attention has been drawn towards the next date fixed i.e. 24.1.2023. On that date a straightaway Non-Bailable Warrant has been issued without verifying the fact as to whether the applicant has been informed about the date fixed i.e. 24.1.2023 and about theailable warrant being issued against him on 10.1.2023. Sri Chakravarty has further drawn attention of this Court towards the third order dated 8.2.2023 whereby the learned trial court straightaway issued N.B.W. and proclamation of section 82 Cr.P.C. again without verifying the fact as to whether the applicant is aware about the N.B.W. being issued on 24.1.2023.

5. Sri Chakravarty has placed reliance of the dictum of Apex Court in re: ***Inder Mohan Goswami and Anr. vs. State of Uttaranchal and Ors., 2007 AIR SCW 6679*** whereby the Hon'ble Apex Court has deprecated such exercise being adopted by the learned trial court. The Hon'ble Apex Court in re: ***Inder Mohan Goswami (supra)*** has observed that if the appearance of any person / accused person is required before the court concerned, he should have been first issued summons and the court should remain careful on the aspect that if the person concerned has not appeared before the court concerned on the summons when such summons have not been served upon him, however, upon his family member, again summons should have been issued and if the learned trial court is convinced that despite the service of the summons upon the person concerned he is deliberately trying to avoid the process of law,ailable warrant may be issued but before issuing N.B.W. against such person the Court should remain very careful inasmuch as issuing N.B.W. against any accused person directly affects his fundamental right to life and liberty. The Apex Court in ***Inder Mohan Goswami (supra)*** has issued guidelines to the effect that under what circumstances the strict process should be issued as under :

*"....Personal liberty and the interest of the State Civilized countries have recognized that liberty is the most precious of all the human Personal liberty and the interest of the e State Civilized countries rights The American Declaration of Independence 1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights 1966 all speak with one voice - liberty is the natural and inalienable right of every human being Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law...*

*The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.*

*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...."*

***[Emphasis Supplied]***

6. Sri Chakravarty has submitted that if the facts and circumstances of the present case are tested on the touchstone of the guidelines of the Hon'ble Apex Court in re: **Inder Mohan Goswami (supra)** the impugned orders whereby the Non-Bailable Warrant and proclamation u/s 82 Cr.P.c. has been issued, those orders would be liable to be set aside. Sri Chakravarty has also placed reliance on the judgment and order dated 10.12.2021 passed in **Case :- U/s 482/378/407 No. 5195 of 2021 (Vinod Kumar Singh @ Vinod Singh vs. State of U.P.)** whereby this Court placing reliance of the order of co-ordinate Bench of this Court has directed that before issuing proclamation u/s 82 Cr.P.C. there must be an application supported with an affidavit of the prosecution to show and convince the learned court below that despite all possible efforts being taken by the prosecution serving summons, bailable warrants and non-bailable warrants upon him or her such person is not appearing before the Court concerned, therefore, the proclamation u/s 82 Cr.P.C. may be issued and the learned trial court after being satisfied on the contents of such application which is supported by an affidavit may issue proclamation u/s 82 Cr.P.C. but such proclamation may not be issued in a cursory manner infringing the fundamental right of any person enshrined under Article 21 of the Constitution of India.

7. Therefore, Sri Chakravarty has stated that the impugned orders dated 10.1.2023, 24.1.2023 and 8.2.2023 are patently illegal and unwarranted, the same may be set aside. The applicant undertakes that he shall appear before the learned trial court concerned on the next date fixed i.e. 13.3.2023 and shall participate in the proceedings. Sri Chakravarty has also apprised the Court that since the marriage of the daughter of the applicant was fixed on 25.1.2023, therefore, he could not appear before the learned trial court concerned on 10.1.2023 and 24.1.2023 and this fact has been apprised by the family members of the applicant to the Process Server as such report has been enclosed with the petition as Annexure no. 5. However, in such report the subsequent part thereof which indicates that the applicant has given undertaking that he shall appear on the date fixed before the court is not correct rather the applicant has not given any undertaking to the Process Server through his family member that he shall be appearing before the court concerned on 10.1.2023. In any case he shall be appearing on the next date and shall participate in the proceedings properly.

8. Sri Anurag Kumar Singh, learned counsel for the C.B.I. has tried to defend the impugned orders dated 10.1.2023, 24.1.2023 and 8.2.2023 by submitting that when the Process Server approached the family members of the present applicant on 8.1.2023 and apprised that the next date has been fixed as 10.1.2023, such process has been served upon the sister-in-law (Bhabhi of the present applicant) and the Process Server talked with the applicant, who assured that he shall appear on the next date fixed, therefore, avoiding the process of law despite knowing the fact that next date is fixed before the trial court is already uncalled for, for the applicant itself, therefore, the learned trial court has rightly issued bailable warrant on 10.1.2023, however, on being further confronted as to whether the present applicant was informed about the bailable warrant being issued against him on 10.1.2023 fixing next date for 24.1.2023, Sri Singh has stated that he has no specific instructions on that point.

9. On being confronted as to whether the summon has been served in the light of section 64 Cr.P.C., Sri Singh has fairly stated that such summon has

not been served on any male family member of the applicant. On being further confronted as to whether the present applicant was informed the dates fixed in the court and the subsequent date 8.2.2023 has been fixed and on 24.1.2023 N.B.W. has been issued against him, Sri Singh has again stated that he has no specific instructions to the effect that as to whether the earlier date and orders have been intimated to the applicant or not. Lastly, Sri Singh has been asked as to whether any application supported by an affidavit has been filed before the learned trial court seeking proclamation against the applicant u/s 82 Cr.P.C., Sri Singh has stated that on that point too he has no specific instructions.

**10.** Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that if the appearance of any person / accused person is required before the learned trial court firstly summons should have been issued and if the person concerned does not appear before the court concerned on the date fixed the court concerned should first verify as to whether such summon has been served upon the applicant or not and if such summon has not been served on him personally at least one more summon should have been issued to him and on the next date this fact must be verified as to whether such summon has been served on the person concerned or not and if the court is convinced that despite the summons being served upon the person concerned he is avoiding the process of law, the bailable warrant can be issued but at the stage of non-bailable warrant the court should take proper care and precaution convincing itself that despite the service of bailable warrant on couple of dates the process of law is being avoided only in that extreme circumstance the Non-Bailable Warrant should be issued as such process of law directly relates with the liberty of a person which is guaranteed under Article 21 of the Constitution of India. In other words before issuing N.B.W. due care and precaution is warranted for the learned trial court and N.B.W. should not be issued in a cursory manner. Further, if the learned trial court is willing to issue proclamation u/s 82 and 83 Cr.P.C. against such accused persons, the degree of carefulness and precaution would be increased and such orders relating to the proclamation may be issued only on the application of the

prosecution supported with an affidavit that despite all reasonable efforts being taken against the accused person to serve upon the summon the bailable warrant and N.B.W. he / she is avoiding the process, the court by assigning specific and cogent reasons to the effect that now there is no other way out except to initiate proceedings u/s 82 Cr.P.C. and 83 Cr.P.C. such proclamation can be issued but that proclamation cannot be issued in a cursory manner in view of the dictum of Apex Court in re: **Inder Mohan Goswami (supra)**.

In the present case the summon has not been served upon the applicant in terms of section 64 Cr.P.C. which provides that if the person whose presence is required in the Court is not present in the house such summon should be served upon any male member of the family but the same has been served upon one female member of the family.

**11.** If the facts and circumstances of the present case are tested on the touchstone of dictum of Apex Court in re: **Inder Mohan Goswami (supra)** I find that the impugned order dated 10.1.2023, 24.1.2023 and 8.2.2023 suffers from illegality, therefore, those orders are liable to be set aside.

**12.** Accordingly, the order dated 10.1.2023, 24.1.2023 and 8.2.2023 are hereby **set aside**.

**13.** Since the next date has been fixed on 13.3.2023, therefore, the present petitioner is directed to appear before the learned court concerned on 13.3.2023 to face the further proceedings and the learned trial court may proceed further strictly in accordance with law ignoring the impugned orders dated 10.1.2023, 24.1.2023 and 8.2.2023. However, it is made clear that if the petitioner does not appear before the learned trial court on 13.3.2023, the benefit of this order shall not be available to him and the learned trial court may take any appropriate step against him which is permissible under the law.

7.

**14.** It is made clear that the petitioner may take other appropriate remedy before the appropriate court of law for that no liberty is required.

**15.** In view of aforesaid terms, the petition is **allowed**.

*(Rajesh Singh Chauhan, J.)*

**Order Date :- 27.2.2023**

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