

(2022)011LR A254
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 20.12.2021

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Application U/S 482/378/407 No. 5475 of 2021

Praveen Kumar Singh @ Praveen Singh & Ors.

...Applicants

Versus

State of U.P. & Ors. ...Opposite Parties

Counsel for the Applicants:

Agendra Sinha, S.D. Singh

Counsel for the Opposite Parties:

G.A.

(A) Criminal Law - The Code of Criminal Procedure, 1973 - Section 482 - Inherent power - Indian Penal Code, 1860 - Sections 147, 148, 354, 452, 323, 504 & 506 , The Protection of Children From Sexual Offences Act, 2012 - Section 7/8 , The Scheduled Castes/Scheduled Tribes (Prevention from Atrocities) Act, 1989 - Sections 3 (i) (r), 3 (i) (s), 3 (ii) (v) - if any accused person has not been arrested during investigation and has cooperated with the investigation, there is no need to arrest him after filing charge sheet, particularly, if the nature of offences is not so serious - arrest is not mandatory in all cases and if the accused person is cooperating with investigation, there is no need to arrest . (Para - 10)

Quashing of Charge-sheet , summoning order, non-bailable warrant including the entire proceeding - applicants/petitioners have not been arrested during investigation - status of accused described - police granted bail - fully co-operated with the investigation - criminal case being lodged against the petitioners as a counter blast being a cross case.(Para - 4)

HELD:-The courts have to be extremely careful before issuing non-bailable warrants. In the order where the bailable/ non-bailable warrant or proclamation under Section 82 Cr.P.C. is issued, the court must indicate that despite the service of summons or bailable warrant or non-bailable warrant the accused has not appeared. In the absence of such indication the coercive orders, would be treated as if they failed the test of statutory prescriptions prescribed under Sections 64 & 65 of the Cr.P.C. . (Para - 13)

Petition disposed of finally. (E-7)

List of Cases cited:-

1. Inder Mohan Goswami & anr. Vs St. of Uttaranchal & ors. , (2007) 12 SCC 1
2. Satender Kumar Antil Vs C.B.I. & Anr, Petition(s) for Special Leave to Appeal (Cr.) No(s).5191/2021
3. Aman Preet Singh Vs C.B.I. through Director, Criminal Appeal No.929 of 2021
4. Court on its own Motion Vs C.B.I., (2004) 72 DRJ 629
5. Siddharth Vs The St. of U.P.& anr., Criminal Appeal No.838 of 2021 (arising out of SLP (Cr.) No.5442/2021)
6. Joginder Kumar Vs St. of U.P. & ors, (1994) 4 SCC 260

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri S.D. Singh, learned counsel for the petitioners and Sri Ran Vijay Singh, learned Additional Government Advocate for the State.

2. In view of the proposed order, the notice to opposite party No.3 is hereby dispensed with.

3. By means of this petitioner, the petitioners have prayed for quashing the Charge-sheet dated 30.11.2018, arising out of Case Crime No.333 of 2018, under Sections 147, 148, 354, 452, 323, 504 & 506 I.P.C., Section 7/8 of Protection of Children from Sexual Offences Act and Sections 3 (i) (r), 3 (i) (s), 3 (ii) (v) of SC/ST Act, Police Station-Gauriganj, District-Amethi, as well as the summoning order dated 22.07.2019 and non-bailable warrant dated 06.09.2021 issued by the learned Additional Session Judge/ Special Judge, POCSO Act, Court No.1, District-Sultanpur in Special Session Trial No.407 of 2019 (State vs. Praveen Singh & others) including the entire proceeding.

4. Learned counsel for the petitioners, at the very outset, has submitted that the present applicants/ petitioners have not been arrested and as per the charge-sheet where the status of accused has been described, it says that the police has granted bail. Therefore, for all practical purposes the petitioners have not been arrested during investigation. Further, they have fully co-operated with the investigation. This is a criminal case being lodged against the petitioners as a counter blast being a cross case.

5. Learned counsel for the petitioners has drawn attention of this Court towards Annexure No.3 of this petition, which is an order-sheet which indicates that the petitioners were absent on 02.07.2021 then bailable warrant of Rs.10,000/- was issued, again on the next date i.e. 06.09.2021 the non-bailable warrant has been issued against the petitioners. The aforesaid order issuing the non-bailable warrant dated 06.09.2021 is in violation of Section 65 Cr.P.C. inasmuch as the learned court concerned has not indicated the subjective satisfaction as to whether the bailable warrant has been served upon the petitioners or not. The law is clear that if despite the service of bailable warrant upon the accused person, he/ she does not appear, the non-bailable may be issued.

6. On that, the attention has been drawn towards the dictum of Hon'ble Apex Court rendered in re: ***Inder Mohan Goswami and another vs. State of Uttaranchal and others reported in (2007) 12 SCC 1*** referring paras-51 to 56, which read as under:-

"51. 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.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilized society. Sometimes in the larger interest of the Public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

- * it is reasonable to believe that the person will not voluntarily appear in court; or*
- * the police authorities are unable to find the person to serve him with a summon; or*
- * it is considered that the person could harm someone if not placed into custody immediately.*

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. 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. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issueailable- warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the courts proceeding intentionally, the process of issuance of the non-ailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-ailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-ailable warrants should be avoided."

7. Learned counsel for the petitioners has further submitted that since the petitioners have never been arrested during investigation and have co-operated with the investigation, therefore, as per the settled proposition of law by Hon'ble Apex Court, they should not be taken into custody after filing of the charge-sheet

8. Per contra, Sri Ran Vijay Singh, learned Additional Government Advocate has opposed the aforesaid prayer of the petitioners, but could not dispute the aforesaid settled proposition of law.

9. Heard the learned counsel for the parties and perused the record.

10. In view of the facts and circumstances of the issue, let the petitioners be appeared before the learned court below within a period of four weeks from today and file appropriate application and if the petitioners appear before the learned court below within the aforesaid stipulated time in terms of this order and move appropriate application, the learned court below shall consider and decide the same expeditiously, if possible on the same day strictly in accordance with law and in the light of dictum of Hon'ble Apex Court rendered in re: **Satender Kumar Antil Vs. Central Bureau of Investigation & Anr, Petition(s) for Special Leave to Appeal (Crl.) No(s).5191/2021** as well as in the light of the judgment dated 02.09.2021 in re; **Aman Preet Singh vs. C.B.I. through Director, Criminal Appeal No.929 of 2021** (arising out of SLP (Crl.) No.5234/2021), wherein the Apex Court has considered the decision of Delhi High Court in re; **Court on its own Motion vs. Central Bureau of Investigation (2004) 72 DRJ 629**, wherein the guideline was formulated that if any accused person has not been arrested during investigation and has cooperated with the investigation, there is no need to arrest him after filing charge sheet, particularly, if the nature of offences is not so serious. In the aforesaid judgment, the Apex Court has considered its own judgment in re; **Siddharth vs. The State of Uttar Pradesh & Anr., Criminal Appeal No.838 of 2021** (arising out of SLP (Crl.) No.5442/2021), whereby the Apex Court considering the observation of the well celebrated judgment in re; **Joginder Kumar vs. State of U.P. & Ors, (1994) 4 SCC 260**, has observed that the arrest is not mandatory in all cases and if the accused person is cooperating with investigation, there is no need to arrest.

11. Till the disposal of such application of the petitioners, the non-ailable warrant shall not be executed against them but if the petitioners do not file application within four weeks, as aforesaid, the benefit of this order may not be given to them and the learned court below would be at liberty to take appropriate coercive steps, as per law.

12. Before parting with the matter, I must observe that the learned court below must take care of relevant facts before issuing theailable warrants, non-ailable warrants and proclamation under Section 82 Cr.P.C.

13. The Hon'ble Apex Court in re: **Inder Mohan Goswami** (supra) has clearly observed that issuance of non-ailable 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-ailable warrants. Further, in the order where theailable/ non-ailable warrant or proclamation under Section 82 Cr.P.C. is issued, the court must indicate that despite the service of summons orailable warrant or non-ailable warrant the accused has not appeared. In the absence of such

indication the coercive orders, as said above, would be treated as if they failed the test of statutory prescriptions prescribed under Sections 64 & 65 of the Cr.P.C.

14. Accordingly, the instant petition is *disposed of finally* in terms of the aforesaid order making it clear that I have not decided the validity of the charge-sheet. Therefore, the petitioners would be at liberty to avail appropriate remedy before appropriate court of law at various stages.
