

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 4551 of 2022

Julekha Khatoon, age- 65 years, W/O Md. Gulbahar Miyan,
R/o Shyamdih, P.O. & P.S.- Katras, Dist.- Dhanbad, Jharkhand
..... Petitioner

Versus

The State of Jharkhand Opp. Party

For the Petitioner : Md. Asif Khan, Adv.
For the State : Ms. Vandana Bharti, Addl.PP

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C., for quashing the orders dated 04.01.2016, 23.02.2016, and 31.03.2016 passed by learned SDJM, Dhanbad in connection with Katras P.S. case no. 263 of 2015 corresponding to G.R. No. 4574 of 2015, whereby and whereunder, learned SDJM Dhanbad has issued a Non-bailable Warrant of Arrest, the Proclamation under Section 82 of Cr.P.C and attachment order of the property of the accused petitioner under Section 83 of Cr.P.C respectively.
3. It is submitted by learned counsel for the petitioner that as per Section 73 of the Cr.P.C, learned CJM or a Magistrate of first class, may direct to warrant to any person, within his local jurisdiction for the arrest *inter alia* of any person, who is accused of non - bailable offence and is evading his arrest. It is further submitted by learned counsel for the petitioner by drawing attention of the court to the order dated 04.01.2016 passed in the said case, that though in the said order, it has been mentioned that the petitioner is an accused of a non-bailable offence but there is no material in

- the record, to suggest that the petitioner is evading his arrest and in the absence of that, the order passing issue of non-bailable warrant of arrest is not sustainable in law. So far as the order dated 23.02.2016 is concerned, it is submitted by learned counsel for the petitioner that the same has been passed without following the due process of law and without recording the satisfaction that the petitioner is absconding or concealing himself to evade her arrest which is a *sine qua non* for issuing proclamation under Section 82 of Cr.P.C. It is further submitted that the attachment order of the property of the accused-petitioner under Section 83 of Cr.P.C. having been issued without mentioning the description of the property to be attached, the same is also not sustainable in law. Hence, it is submitted that all the three orders dated 04.01.2016, 23.02.2016, and 31.03.2016 passed by learned SDJM, Dhanbad in connection with Katras P.S. case no. 263 of 2015 corresponding to G.R. No. 4574 of 2015 being not sustainable in law, be quashed and set aside.
4. Learned Addl.P.P. appearing for the State vehemently opposes the prayer for quashing the three orders dated 04.01.2016, 23.02.2016, and 31.03.2016 passed by learned SDJM, Dhanbad in connection with Katras P.S. case no. 263 of 2015 corresponding to G.R. No. 4574 of 2015 and submits that the very fact that the learned SDJM, Dhanbad has issued the warrant of arrest, the proclamation under Section 82 of Cr.P.C and the order of attachment under Section 83 of Cr.P.C, itself shows that there were materials available in the record, for learned SDJM, Dhanbad to be satisfied that there is justification for issuance of such orders hence, it submitted that this petition being without any merit be dismissed.
 5. 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 the warrant of arrest may be directed to any person, by the Chief Judicial Magistrate or a Magistrate of First Class, inter alia, who is an accused of non-bailable offence and who is evading his arrest but after going

through the order dated 04.01.2016 passed by learned SDJM, Dhanbad in connection with Katras P.S. case no. 263 of 2015 corresponding to G.R. No. 4574 of 2015, this court finds that there is absolutely no material in the record, to suggest that there is any allegation against the petitioner that the petitioner was evading his arrest nor learned Magistrate has recorded his satisfaction in this behalf, hence, this court is of the considered opinion that the order dated 04.01.2016 passed by learned SDJM, Dhanbad in connection with Katras P.S. case no. 263 of 2015 corresponding to G.R. No. 4574 of 2015, is not sustainable in law and same be quashed and set aside.

6. So far as the order dated 23.02.2016 passed by learned SDJM, Dhanbad in connection with Katras P.S. case no. 263 of 2015 corresponding to G.R. No. 4574 of 2015 is concerned, by now it is a settled principle of law that the court which issues the proclamation under Section 82 of Cr.P.C. must record its satisfaction that the accused in respect of whom the proclamation under Section 82 of Cr.P.C. is made, is absconding or concealing himself to evade his arrest and in case the court decides to issue proclamation under Section 82 of Cr.P.C., it must mention the time and place for appearance of the petitioner in the order itself by which the proclamation under Section 82 of Cr.P.C. is issued.

As already indicated above since the learned Chief Judicial Magistrate, Latehar has neither recorded its satisfaction that the petitioner is absconding or concealing himself to evade his arrest nor fixed any time or place for appearance of the petitioner, this Court has no hesitation in holding that the learned SDJM, Dhanbad has committed gross illegality by issuing the said proclamation under Section 82 of Cr.P.C. without complying with the mandatory requirements of law. Hence, the same is not sustainable in law, therefore, the continuation of the same will amount to abuse of process of law and this is a fit case where the order dated 23.02.2016 passed by learned SDJM, Dhanbad in connection with Katras P.S. case no. 263 of 2015 corresponding to G.R. No. 4574 of 2015 be quashed and set aside.

7. So far as the order dated 31.03.2016 passed by learned SDJM, Dhanbad in connection with Katras P.S. case no. 263 of 2015 corresponding to G.R. No. 4574 of 2015 is concerned, it is pertinent to mention here that the order of attachment of property of the petitioner without mentioning the description of the property to be attached and without recording any reason in writing about the need for passing of such order of attachment is not sustainable in law. Hence, under such circumstances, this Court has no hesitation in holding that the order dated 31.03.2016 passed by the learned SDJM, Dhanbad in connection with Katras P.S. case no. 263 of 2015 corresponding to G.R. No. 4574 of 2015 is also not in accordance with law and continuation of the same will amount to abuse of process of law and this is a fit case where the order dated 31.03.2016 passed by the passed by learned SDJM, Dhanbad in connection with Katras P.S. case no. 263 of 2015 corresponding to G.R. No. 4574 of 201, be quashed and set aside.
8. Accordingly, all the three orders dated 04.01.2016, 23.02.2016, and 31.03.2016 passed by learned SDJM, Dhanbad in connection with Katras P.S. case no. 263 of 2015 corresponding to G.R. No. 4574 of 2015; for the reasons as already discussed above, being not sustainable in law are quashed and set aside and learned SDJM, Dhanbad may pass a fresh order in accordance with law.
9. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)