

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR 1877 of 2024

Shashanka Maiti & Ors.
v/s.

The State of West Bengal

For the Petitioners:

Mr. Prabir Kr. Mitra, Adv.,
Mr. Achin Jana, Adv.,
Mr. Pinak Kr. Mitra, Adv.,
Ms. Subhanwita Ghosh, Adv.,
Mr. Bhaskar Dalui, Adv.

For the State:

Mr. Debasish Roy, Ld.PP
Mr. Arijit Ganguly, Adv.
Ms. Trina Mitra, Adv.

Heard on: 16.07.2024

Date: 22.07.2024

SUVRA GHOSH, J. :-

- 1) The petitioners are aggrieved by an order passed by the learned Additional Sessions Judge, 1st Court, Jhargram on 19th September, 2023 in connection with Special Case no. 5 of 2021 issuing warrant of arrest against them.
- 2) Learned counsel for the petitioners submits that the petitioners were not named in F.I.R. and no notice was served upon them upon submission of charge sheet six years after the complaint was lodged. Though the learned Sessions Judge took cognizance of the charge

sheet which was submitted on 6th August, 2021, no summons/warrant was issued upon the petitioners for securing their presence. On 19th September, 2023, the learned trial Court issued warrant of arrest against the absconding accused including the petitioners without assigning any reasons therefor.

- 3) Placing reliance on the authorities in M.C. Abraham and Another v/s. State of Maharashtra and Others reported in 2003 SCC (Cri) 628, Inder Mohan Goswami and Another v/s. State of Uttaranchal and Others reported in (2008) 1 SCC (Cri) 259, Sharif Ahmed and Another v/s. State of Uttar Pradesh and Another reported in Criminal Appeal no. 1074 of 2017 and Tarsem Lal v/s. Directorate of Enforcement, Jalandhar Zonal Office in Criminal Appeal No. 2608 of 2024, learned counsel has submitted that when the petitioners were not arrested in course of investigation, a summons and not a warrant should be issued by the Court upon taking cognizance of the charge sheet. The accused against whom charge sheet has been submitted under section 420/406//409/467/120B of the Indian Penal Code have been granted anticipatory bail by the Court. Allegation against the petitioners is under section 420/406/467/120B of the Code. The petitioners shall appear before the Court and face trial. They pray for quashing of the warrant of arrest issued against them.
- 4) Per contra, learned counsel for the State submits that composite charge sheet has been submitted against all the accused including the petitioners under section 409/120B of the Code besides other offences. Section 409 being a heinous offence, the learned trial Court

is rightly issued warrant of arrest against the petitioners to secure their presence during trial.

- 5) I have considered the rival contention of the parties, material on record and the law on the point.
- 6) It appears that the complaint was lodged on 26th November, 2015 and the petitioners were not named therein. Charge sheet was submitted on 6th August, 2021 against the accused named in serial no. 2 to 6 under section 420/406/409/467/120B of the Indian Penal Code and against the accused named in serial no. 7 to 195 including the petitioners under section 420/406/467/120B of the Code. It is not in dispute that though cognizance of the charge sheet was taken, no notice/summons was issued upon the petitioners for securing their presence before the Court. It was only on 19th September, 2023 that warrant of arrest was issued against them without assigning any reason therefor. The Hon'ble Supreme Court, in the authority in Inder Mohan Goswami (supra) has observed that issuance of non-bailable warrant involves interference with the personal liberty and arrest and imprisonment means deprivation of the most precious right of an individual. To strike a balance between the liberty of an individual and the interest of the society in maintaining law and order, the Hon'ble Court has laid down certain parameters for issuance of non-bailable warrant:-

“Non-bailable warrant should be issued to bring a person to court when summons or 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.”*

- 7) The Hon’ble Court, in the authority in Sharif Ahmed (supra), has observed that non-bailable warrant should not be issued unless the accused is charged with a heinous crime and is likely to evade the process of law or tamper/destroy evidence.
- 8) In the authority in Tarsem Lal (supra), the Hon’ble Supreme Court has held that there is nothing inconsistent between Section 88 of the Code of Criminal Procedure and the provisions of the PMLA and when an accused is not arrested during investigation and appears before the Court pursuant to summons, the Special Court can always take recourse to Section 88 of the Code. It is not necessary for the accused to seek bail.
- 9) In the case in hand, the learned Trial Court has issued warrant of arrest against the petitioners mechanically without application of mind. The petitioners have not been charged with offence under section 409 of the Indian Penal Code in the charge sheet and the order impugned does not disclose that they are likely to evade the process of law or tamper/destroy evidence. Admittedly the investigating officer did not consider it necessary to arrest the petitioners during investigation and no step was also taken by the Court to secure their

appearance before the Court upon taking cognizance of the charge sheet.

- 10) Under such circumstances, the learned Trial Court should not have issued warrant of arrest against the petitioners without justifying issuance of the same in accordance with law.
- 11) In view of the above, the warrant of arrest qua the petitioners issued vide order passed on 19th September, 2023 by the learned Additional Sessions Judge, 1st Court, Jhargram in Special Case no. 5 of 2021 is quashed/set aside.
- 12) The petitioners are directed to appear before the learned Trial Court within ten days from date and take necessary steps in accordance with law, failing which the learned Trial Court shall be at liberty to take appropriate steps in accordance with law without further reference to this Court.
- 13) Accordingly, C.R.R. 1877 of 2024 is disposed of.
- 14) There shall however be no order as to costs.
- 15) Copy of this judgment be sent to the learned Additional Sessions Judge, 1st Court, Jhargram for information and necessary action.
- 16) Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)