

मुकुल गोयल,

आई0पी0एस0



डीजी परिपत्र सं0 - 46/2021

पुलिस महानिदेशक,

उत्तर प्रदेश।

पुलिस मुख्यालय, गोमती नगर विस्तार,

लखनऊ-226010

दिनांक: दिसम्बर 29, 2021

विषय:- रिट याचिका सं0-5195/2021 अन्तर्गत धारा-482/378/407 विनोद कुमार सिंह उर्फ विनोद सिंह बनाम उ0प्र0 राज्य में मा0 न्यायालय द्वारा पारित आदेश दिनांक 10.12.2021 का पूर्णतया अनुपालन कराये जाने के संबंध में।

प्रिय महोदय/महोदया,

आप सभी अवगत है कि दं.प्र.सं. 1973 के अध्याय-6 में (हाजिर होने को विवश करने के लिये आदेशिकाएँ), (क-समन), (ख-गिरफ्तारी का वारण्ट), (ग-उद्घोषणा और कुर्की) धारा-61 से लेकर 83 तक में अभियुक्तगण को मा0 न्यायालय में हाजिर होने को विवश करने के लिये आदेशिकाएँ जारी किए जाने का प्राविधान है। विवेचना के दौरान जो अभियुक्तगण विवेचना में सहयोग नहीं कर रहे हैं तथा विवेचक अथवा मा0 न्यायालय के समक्ष उपस्थित होने से बच रहे हैं, ऐसे अभियुक्तगण के विरुद्ध दं.प्र.सं. के उक्त उपबंधों के अनुसार कार्यवाही किए जाने हेतु विवेचक द्वारा मा0 न्यायालय के समक्ष अनुरोध किए जाने का प्राविधान है।

मा0 न्यायालय द्वारा उपरोक्त याचिका में विवेचकों द्वारा रिट पिटीशन संख्या- 2261/2021 कुँवर महेन्द्र प्रताप सिंह उर्फ चन्दन सिंह बनाम उ0प्र0 राज्य व अन्य में मा0 न्यायालय द्वारा पारित आदेश दिनांकित 18.08.2021 (छायाप्रतिल संलग्न) में निर्गत निर्देशों का अनुपालन न किये जाने के सम्बन्ध में अप्रसन्नता व्यक्त करते हुये निम्नवत आदेश पारित किया गया है-

"Let this order be intimated to the Director General of Police through the Senior Registrar of this Court within 5 days so that after taking cognizance of this order, the Director General of Police may issue appropriate circular issuing guidelines under such circumstances the warrants and proclamation orders may be sought from the appropriate court of law and necessity of affidavit with such applications be made mandatory in the light of observation of this Court dated 18.8.2021 in re: Kunwar Mahendra Pratap Singh @ Chandan Singh (supra)."

रिट पिटीशन संख्या- 2261/2021 कुँवर महेन्द्र प्रताप सिंह उर्फ चन्दन सिंह बनाम उ0प्र0 राज्य व अन्य में मा0 न्यायालय द्वारा अपने आदेश दिनांकित 18.08.2021 में निम्नवत आदेशित किया गया है -

"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."

अतः आप सभी को निर्देशित किया जाता है कि रिट पिटीशन संख्या- 2261/2021 कुँवर महेन्द्र प्रताप सिंह उर्फ चन्दन सिंह बनाम उ०प्र० राज्य व अन्य में मा० न्यायालय द्वारा पारित उपरोक्त आदेश का भलीभाँति परिशीलन कर अपने अधीनस्थ समस्त विवेचनाधिकारियों को उपरोक्त निर्देशों से अवगत करा दें तथा इन निर्देशों का कड़ाई से अनुपालन कराना सुनिश्चित करें।

भवदीय,
(28/12/21)
(मुकुल गोयल)

1. समस्त पुलिस महानिदेशक, उ०प्र० ।
2. समस्त जोनल अपर पुलिस महानिदेशक, उ०प्र० ।
3. समस्त अपर पुलिस महानिदेशक, उ०प्र० ।
4. पुलिस आयुक्त, लखनऊ/वाराणसी/कानपुर नगर/गौतमबुद्ध नगर, उ०प्र० ।
5. समस्त पुलिस महानिरीक्षक/उपमहानिरीक्षक परिक्षेत्र, उ०प्र० ।
6. समस्त पुलिस उप महानिरीक्षक/ वरिष्ठ पुलिस अधीक्षक /पुलिस अधीक्षक, उ०प्र० ।

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 become 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.)