

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 3680 of 2022

**Ajay Mehta @ Prabhat Kumar Singh
Vs.
The State of West Bengal & Anr.**

**For the petitioner : Mr. Sekhar Kumar Basu, Sr. Adv.,
Mr. Soubhik Mitter, Adv.,
Mr. Abid Hussain, Adv.,
Ms. Rajnandini Das, Adv.,
Mr. Sk. Masoom Ali, Adv.,
Mr. Karan Bapuli, Adv.**

Judgement on : 29.09.2022.

Bibek Chaudhuri, J.

The petitioner being an accused in connection with Rabindra Sarobar Police Station Case No. 118/2021 dated 15th July, 2021 under Sections 419/420/406/465/467/468/471/506/120B of the Indian Penal Code has assailed an order dated 12th August, 2022 passed by the Learned Chief Judicial Magistrate at Alipore issuing production warrant against the petitioner directing him to produce from Tihar Jail, New Delhi before the Learned Magistrate on 20th August, 2022 and subsequent orders dated 30th August, 2022 and 3rd September, 2022 passed by the Learned Chief Judicial Magistrate at Alipore in the said case.

It is submitted by the Learned Senior Counsel on behalf of the petitioner that in connection with the above noted case the Learned Chief Judicial Magistrate at Alipore issued warrant of arrest against the petitioner on 4th August, 2021 fixing 7th September, 2021 for submission of execution report. Since the Police Authority could not execute the warrant of arrest against the petitioner time was extended for execution of warrant of arrest till 30th June, 2022. That on 10th August, 2022 the Investigating Officer informed the Learned Magistrate that the petitioner was arrested in connection with another case, being Special Cell Police Station (Delhi) No. 236 dated 4th August, 2022 under Sections 419/420/34 of the Indian Penal Code and Sections 66C/66D of the Information Technology Act and he was languishing in Tihar Jail. Therefore, on the prayer of the Investigating Officer the Learned Chief Judicial Magistrate at Alipore issued production warrant vide order dated 12th August, 2022 under Section 267 of the Code of Criminal Procedure directing the Superintendent, Tihar Jail/Correctional Home, Delhi to produce the petitioner before the Court of the Learned Chief Judicial Magistrate. Next date was fixed on 20th August, 2022 for production of the accused/petitioner. However, on that date the petitioner was not produced before the Learned Chief Judicial Magistrate, Alipore. Subsequently, series of orders were passed directing the Superintendent of Tihar Jail to ensure production of the petitioner. But the petitioner has not been produced before the Learned Chief Judicial Magistrate at Alipore.

In the meantime, the order dated 12th August, 2022 and the subsequent orders have been challenged before this Court in the instant revision.

Section 267 of the Code of Criminal Procedure states as follows:-

"267. Power to require attendance of prisoners.-(1) Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court.-

- (a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or
- (b) that it is necessary for the ends of justice to examine such person as a witness,

the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

Sub Section 1 of Section 267 provides that a criminal Court in a State may issue an order to the Officer-in-Charge of a prison, whether in the same State or another State, requiring him to produce

before the Court a person who is confined or detained in that prison. The purpose of issuing such an order is – (i) for answering to a charge of an offence or (ii) for the purpose of any proceeding against him, or (iii) to examine such a person as a witness.

It is submitted by the Learned Senior Counsel on behalf of the petitioner that in view of the provision contained in Section 269(b), the Officer-in-Charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining.

Thus, according to the Learned Senior Counsel on behalf of the petitioner Section 267 is subject to Section 269 which states that where the person in respect of whom a production warrant is issued, is under committal for trial or under remand pending trial or against whom a preliminary investigation is pending, the Officer-in-Charge of the prison shall abstain from carrying out the Court's order requiring production of the accused. The Learned Magistrate issued production warrant vide order dated 12th August, 2022 against the petitioner without considering the fact as to whether under Section 269(b) of the Code of Criminal Procedure, the petitioner was required to be produced to the committal Court for trial or under remand pending trial or pending a preliminary investigation.

The order issuing production warrant to compel production of an accused before the Learned Magistrate is absolutely an interlocutory order and, in my considered opinion, is not revisable. If an accused is wanted in connection with a criminal case and he is detained in custody in a Jail/Correctional Home, the Magistrate is empowered to issue production warrant. Section 269 gives the authority to the Officer-in-Charge of the prison where the accused is

detained to abstain from carrying out the Court's order under certain circumstances stipulated in Clauses (a) to (c) of Section 269. The issue as to whether an accused is to be produced in a particular Court on the strength of production warrant, depends upon the Court issuing warrant of arrest and the Officer-in-Charge of the prison where he is detained. There is no reason to be aggrieved against the order dated 12th August, 2022.

For the reasons stated above, I do not find any merit in the instant revision.

Accordingly, the instant revision being devoid of any merit is summarily **dismissed**.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 06.