

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.98 of 2024

1. Chandrika Sen, aged about 65 years; wife of Late Deepak Kumar Sen;

2. Arindam Sen, aged about 40 years, son of Late Deepak Kumar Sen;
Both resident of Orion Exotica Tower-2, 4th Floor, Flat No. 4C,
168 Banke Behari Chatterjee Road, Dhalipara More, P.O. & P.S.
Kasba, District- Kolkata (West Bengal) ... Petitioners

Versus

1. The State of Jharkhand

2. Dakshina Sen, wife of Arindam Sen and daughter of Somen Dutta,
resident at College Road (near Adhikari Lodge), P.O. & P.S.
Ghatshila, District- Ghatshila (Jharkhand)

... Opposite Parties

For the Petitioners : Mr. Rajeeva Sharma, Sr. Advocate
Mr. Om Prakash, Advocate
Mr. Ritesh Kumar, Advocate

For the State : Mr. Sunil Kr. Dubey, Addl.P.P.

For the O.P. No.2 : Mr. P. P. N. Roy, Sr. Advocate
Mr. P. A. N. Roy, Advocate
Ms. Arti Roy, Advocate

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 of the Code of Criminal Procedure with a prayer to quash the orders dated 19.08.2023, 16.10.2023 as well as order dated 13.12.2023 passed by learned A.C.J.M, Ghatshila in connection with Ghatshila P.S. Case No.23 of 2022 whereby and where under the learned A.C.J.M., Ghatshila has respectively issued non-bailable warrant of arrest,

proclamation under Section 82 of Cr.P.C. and attachment order of property under Section 83 of Cr.P.C.

3. The brief facts of the case is that the petitioners are the accused persons of the said Ghatshila P.S. Case No.23 of 2022 registered for the offences punishable under Sections 498-A, 406, 386, 387, 504, 34 of the Indian Penal Code. The petitioners filed Cr.M.P. No.1334 of 2022 and vide order dated 22.06.2022, a co-ordinate Bench of this Court passed an interim order in the said case to the effect that the petitioners will not be arrested in connection with Ghatshila P.S. Case No. 23 of 2022, pending in the Court of learned Additional Chief Judicial Magistrate, Ghatshila, till the next date of listing. Ultimately, on 16.08.2023, the petitioners sought permission of the court to withdraw the said Cr.M.P. with liberty to raise all the grounds before the appropriate court and the same was permitted to be withdrawn and the interim relief granted to the petitioners stood vacated. Vide order dated 19.08.2023, when the investigation of the case was still going on without any requisition of the Investigating Officer and without recording any satisfaction that the petitioners are evading their arrest, the learned A.C.J.M., Ghatshila ordered for issue of non-bailable warrant of arrest against the accused persons of the case- who are the petitioners herein but as the petitioners evaded the execution of the non-bailable warrant of arrest, the Investigating Officer of the case filed an application for issuance of the proclamation under Section 82 of the Cr.P.C. and the same has been issued vide order dated 16.10.2023 and even then petitioners did not appear, vide order dated 13.12.2023, attachment order of the property of the petitioners under Section 83 of the Cr.P.C., has been passed.

4. Learned senior counsel appearing for the petitioners submits that the order dated 19.08.2023 by which the non-bailable warrant of arrest has been issued *suo moto* by the learned A.C.J.M., Ghatshila without any requisition by the Investigating Officer and without recording any satisfaction that the petitioners are evading their arrest, is not sustainable in law and as the non-bailable warrant of arrest itself, is not sustainable in law so, the subsequent orders of issuing the proclamation and the order for attachment of the property of the petitioners, is also not sustainable in law. Hence, it is submitted that the same be quashed and set aside.

5. Learned Addl.P.P. appearing for the State and the learned senior counsel for the opposite party No.2 on the other hand submit that true it is that vide order dated 19.08.2023, the said order do not reflect that there was any material before the learned A.C.J.M., Ghatshila to be satisfied that the petitioners were evading their arrest but from the perusal of the order dated 16.10.2023, it is crystal clear that the petitioners are evading their arrest and hence, rightly the proclamation under Section 82 of the Cr.P.C. has been made and even consequent upon the same, as the petitioners have not appeared before the learned trial court, rightly the attachment order of property was issued. Therefore, no illegality having been committed by the learned A.C.J.M., Ghatshila, this Cr.M.P., being without any merit, be dismissed.

6. 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 under Section 73 of the Code of Criminal Procedure, *inter alia*, in the Magistrate of First Class may direct the warrant to any person within his local jurisdiction for arrest *inter alia* if person is accused of a non-bailable offence and

is evading his arrest. Now, undisputedly, the petitioners are the accused of a non-bailable offence *inter alia* punishable under Sections 498-A, 406, 386, 387, 504, 34 of the Indian Penal Code. So, only condition which the learned A.C.J.M., Ghatshila ought to have been satisfied before issuing the warrant of arrest is that the petitioners are evading their arrest but the perusal of the order dated 19.08.2023 reveals that the learned A.C.J.M., Ghatshila has not recorded its satisfaction that the petitioners are evading their arrest nor is there any material in the record to suggest that the petitioners were evading their arrest and as without that satisfaction, the non-bailable warrant of arrest has been issued, this Court is of the considered view that the order dated 19.08.2023 passed by learned A.C.J.M., Ghatshila in connection with Ghatshila P.S. Case No.23 of 2022, is not sustainable in law.

7. Accordingly, the order dated 19.08.2023 passed by learned A.C.J.M., Ghatshila passed in connection with Ghatshila P.S. Case No.23 of 2022, is quashed and set aside.

8. So far as the orders dated 16.10.2023 and 13.12.2023 are concerned, there is no illegality in the said orders but since the very basis for issuance of proclamation was the non-bailable warrant of arrest issued, which has been held illegal, by this court in the foregoing paragraphs of judgment. Hence, the consequential orders dated 16.10.2023 and 13.12.2023 are also not sustainable in law. Accordingly, the said orders dated 16.10.2023 and 13.12.2023 are quashed and set aside. But as there are sufficient materials in the record to suggest that the Investigating Officer has reported to the learned A.C.J.M., Ghatshila that the petitioners are evading their arrest and they are not staying at the place where they are supposed to be and they are not co-operating with the

investigation of the case, hence, the petitioners are directed to appear before the learned trial court within six weeks and in the meanwhile, if the petitioners so advised, may file the prayer for anticipatory bail. If the petitioners fail to appear before the learned A.C.J.M., Ghathila, within 6 weeks from the date of this order, the learned A.C.J.M., Ghathila is directed to pass appropriate fresh orders in accordance with law.

9. Accordingly, this Cr.M.P. stands disposed of.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 01st of July, 2024
AFR/ Animesh