

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 120 of 2024

Md. Khairul @ Khairul Mian, S/o Late Sabrati Miyan, aged about 56 years, R/O-Village- Changosingha, P.O. -Dhanwar, P.S. -Dhanwar (Ghorthambha O.P.), District -Giridih.

.... Petitioner

Versus

State of Jharkhand

.... Opp. Party

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner : Mr. Rabindra Kr. Shekhar, Advocate
	: Mr. Rajiv Kr. Shekhar, Advocate
For the State	: Mrs. Lily Sahay, Addl. P.P.

By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the order dated 18.10.2023 and 05.12.2023 passed by the learned Judicial Magistrate -1st Class, Giridih in connection with Dhanwar P.S. Case No. 173 of 2023 by which the non-bailable warrant of arrest and the proclamation under Section 82 Cr.P.C. respectively were issued by the learned Judicial Magistrate -1st Class, Giridih.
3. The brief facts of the case is that on 18.10.2023, the I.O. of the case filed a petition along with the case diary before the learned Judicial Magistrate -1st Class, Giridih praying therein for issuance of the non-bailable warrant of arrest against the accused

persons of the case including the petitioner who was also the accused person of the case inter-alia for the non-bailable offences punishable under Section 326/354/354B/379/307 of the Indian Penal Code. It was intimated by the I.O. that he made three attempts as mentioned in different paragraphs of the case diary for appearance of the accused persons but the accused persons were not found in their residential address. The learned Judicial Magistrate -1st Class, Giridih considered the materials in the record and on being satisfied that the petitioner along with the co-accused persons in respect of whom non-bailable warrant of arrest has been issued, were concealing themselves and are evading arrest, ordered for issuance of non-bailable warrant of arrest. Vide order dated 05.12.2023, the I.O. of the case returned the non-bailable warrant of arrest inter-alia against the petitioner and the co-accused persons of the case and made the prayer for issuance of the proclamation under Section 82 Cr.P.C. The learned Judicial Magistrate -1st Class, Giridih, upon being satisfied that the petitioners along with the co-accused persons in respect of whom the proclamation under Section 82 Cr.P.C. was allowed were concealing themselves to prevent the execution of warrant of arrest, felt the necessity for issuing the proclamation under Section 82 Cr.P.C. and accordingly, issued the said proclamation directing the accused persons of the case to appear before the court on or before 25.01.2024 during the court hours.

4. It is submitted by the learned counsel for the petitioner relying upon the Judgment of a Co-ordinate Bench of this Court,

in the case of **Md. Rustum Alam @ Rustam and Ors. Vs. The State of Jharkhand**, passed in Cr.M.P. No.2722 of 2019 dated **27.04.2020**, that therein the Co-ordinate Bench has held that when the following two conditions simultaneously exists, then only the court can issue the warrant of arrest; (i) the petitioner is accused of a non-bailable offence, (ii) he is evading his arrest.

5. It is further submitted by the learned counsel for the petitioner that in the case of **Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra**, reported in (2012) 9 SCC 791, upon which the Co-ordinate Bench relied, it was observed that the warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to extremely serious consequence and ramifications which ensue on issuance of warrants.

6. The learned counsel for the petitioner further submits that a *sine qua non* for issuing the warrant is that the satisfaction of the court should be reflected in the order itself to be gathered from the record and then only warrant of arrest can be issued.

7. It is next submitted by the learned counsel for the petitioner that in the said Judgment, it has been observed by the Co-ordinate Bench that there has to be sufficient materials before the court to reach to a conclusion to believe that a person against whom warrant of arrest has been issued, is absconding or concealing himself, and it is not possible for the authorities to execute the warrant of arrest and this satisfaction has to be recorded in the order itself while issuing the processes under

Section 82 of the Code and non-recording of subjective satisfaction in the order will make the order bad and non-speaking one. It is then submitted that the Co-ordinate Bench further held that the court which decides to issue the proclamation under Section 82 Cr.P.C., it must fix the place for the appearance of the accused itself and will not leave it to the Office or Bench Clerk to do the same. Hence, it is submitted that the order dated 18.10.2023 and 05.12.2023, passed by the learned Judicial Magistrate -1st Class, Giridih in connection with Dhanwar P.S. Case No. 173 of 2023 are not sustainable in law and the same be quashed and set aside.

8. The learned Addl. P.P. on the other hand vehemently opposes the prayer to quash the order dated 18.10.2023 and 05.12.2023 passed by the learned Judicial Magistrate -1st Class, Giridih in connection with Dhanwar P.S. Case No. 173 of 2023. It is submitted by the learned Addl. P.P. that the learned Magistrate, in no uncertain manner has recorded its satisfaction that the petitioner is evading his arrest and is involved in non-bailable offences like the offence punishable under Section 326/354/379/307 of the Indian Penal Code and such finding of the learned Judicial Magistrate -1st Class, Giridih, so far as the order dated 18.10.2023 is concerned is based on the three different dates, the reference of which has been made in the concerned paragraphs of the case diary which has also been reflected in the order itself where the petitioner was not found when the police went to secure his appearance, hence, it is submitted that there is no illegality in the order dated 18.10.2023. Similarly, in the order

dated 05.12.2023 based on the materials in the record i.e. the relevant paragraph of the case diary, the learned Judicial Magistrate -1st Class, Giridih has recorded its satisfaction that the petitioner is concealing himself to evade his arrest and the learned Judicial Magistrate himself has fixed the time and place for appearance of the accused being the court hours on or before 25.01.2024 and has not left the same to the Bench Clerk or Office Clerk. Hence, it is submitted that, there absolutely is no illegality committed by the learned Magistrate. Therefore, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

9. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that the perusal of the record reveals that the learned Magistrate has followed all the mandatory requirement of law in passing the order dated 18.10.2023 as well as the order dated 05.12.2023 and the learned Magistrate has recorded its satisfaction that the petitioner is evading his arrest basing upon the materials in the record which has been reflected in the order sheet itself to justify issuing the non-bailable warrant of arrest as the petitioner was also accused of having committed the non-bailable offences inter-alia punishable under Section 326/354/379/307 of the Indian Penal Code and similarly in the order dated 05.12.2023 also the learned Magistrate has recorded its satisfaction that the petitioner is concealing himself to evade his arrest based on the materials available in the record; which has been reflected in the order sheet

and also fixed the time and place for appearance of the accused persons. Hence, in the considered opinion of this Court, there is no illegality in the orders dated 18.10.2023 and 05.12.2023, passed by the learned Judicial Magistrate -1st Class, Giridih in connection with Dhanwar P.S. Case No. 173 of 2023.

10. Therefore, there is no justifiable reason to interfere with the orders dated 18.10.2023 and 05.12.2023, passed by the learned Judicial Magistrate -1st Class, Giridih in connection with Dhanwar P.S. Case No. 173 of 2023.

11. Accordingly, this criminal miscellaneous petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)