


**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
 JODHPUR**

S.B. Criminal Misc. Appli No. 47/2023

Ramesh Kumar Mehta, R/o Gram Lahengun Karma Tola Shivigaha Ps Tandwa Dist. Aurangabad Bihar, Presently R/o Sector No. 3, Khatu Colony, Dist. Banswara, Raj.

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Luvkush Kushwaha S/o Sh. Bhurahu Singh Kushwaha, Aged About 59 Years, Gram Kudhani, Post Karmhari, P.s. Kudhani, Kaimoor, Bihar, Presently R/o Sector No. 3 Khandu Colony, Banswara, Raj.

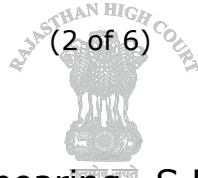
----Respondents

For Petitioner(s) : Mr. Milap Chopra.
 For Respondent(s) : Mr. Sumer Singh Rajpurohit, PP.

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
Order
04/07/2023

1. The instant application has been preferred claiming the following reliefs:-

"It is, therefore, most respectfully prayed that the present Criminal Misc. Application may kindly be allowed and appropriate action may kindly be initiated against the learned Judge below for committing deliberate and willful disobedience of the order dated 07.11.2022 passed in S.B. Criminal Misc. Petition bearing No.7164/2022 (Ramesh Kumar Mehta Vs. State of Rajasthan & Anr.) by this Hon'ble Court. Further, the petitioner may kindly be granted compensation in lieu of the loss to his reputation, image and business wherein the petitioner was sent to jail creating a forever social stigma resulting in huge losses in the work of the petitioner."



2. Upon the petition bearing S.B. Criminal Misc. Petition No.7164/2022 having been filed, the same was disposed of by this Court vide order dated 07.11.2022; the said order dated 07.11.2022 reads as follows:-

"1. The petitioner has preferred this criminal misc. petition under Section 482 Cr.P.C. claiming the following reliefs:

"It is, therefore, most respectfully prayed that the present misc. petition may kindly be allowed and the FIR No.581/2011 dated 09.12.2011 registered at Police Station Kotwali, District Banswara and in pursuance thereof order dated 21.12.2012 passed by the learned trial court in Criminal Case No.589/2012 may kindly be quashed and set aside.

Furthermore, it is prayed that proceedings in pursuance of the filing of the charge-sheet pending before learned trial court may kindly be quashed and set aside and in alternate, arrest warrant issued by the learned trial court may kindly be converted into bailable warrant.

Any other appropriate order which may be considered in favour of the petitioner may kindly be ordered to be issued."

2. Learned counsel for the parties jointly submit that a compromise has been arrived at between the parties.

3. Learned counsel for the petitioner submits that the petitioner is unable to bring the compromise on record because of the standing arrest warrant. He further makes a limited prayer that the arrest warrant issued against the present petitioner vide order dated 02.04.2016 may be converted into a bailable warrant.

4. In light of the precedent law laid down in **Inder Mohan Goswami & Another Vs. State of Uttaranchal & Others reported in AIR 2008 SC, 251** passed by Hon'ble Apex Court., this Court deems it appropriate to grant the relief prayed by counsel for the petitioner and thus, the arrest warrant issued against the petitioner vide order dated 02.04.2016 is substituted by bailable warrant.

5. The petitioner may appear before the learned Court below on the next date fixed by the learned court below and if the petitioner fails to appear on the next date, the order of arrest warrant shall be revived.

6. The present misc. petition is disposed of in the above terms. All pending applications stand disposed of."

3. Learned counsel for the applicant submits that in pursuance of the order passed by this Court, the petitioner appeared before the learned Chief Judicial Magistrate, Banswara with a clear



intention that the non-bailable arrest warrant has been converted into bailable warrant, and thus, the necessary proceeding shall take place accordingly; but to the utter shock of the petitioner even after the directions of this Court to substitute the standing arrest warrant into bailable warrant, the petitioner was sent to judicial custody. The petitioner has annexed the certified copy of the order dated 24.11.2022 whereby the learned trial court has taken note of the order of this Court, while sending the petitioner in custody.

4. Learned counsel for the applicant submits that the petitioner moved a regular bail under Section 439 of Cr.P.C. and thereafter, granted bail on 29.11.2022.

5. Learned counsel for the applicant further submits that ordinarily a judicial discretion would not be a cause of concern, but in the peculiar circumstances, the applicant has been put to custody for more than five days causing him extreme agony and harassment even when the Hon'ble High Court had granted him a relief of substituting the arrest warrant with the bailable warrant.

6. Learned counsel for the applicant also submits that such gross violation of the orders of this Hon'ble Court, which are very clear on the face of it, shows the complete non-application of mind on the part of the learned Chief Judicial Magistrate, Banswara and also casts a deep shadow of illegality in the judicial adjudication so made.

7. Learned counsel for the applicant further submits that in S.B. Criminal Misc. Petition No.7164/2022, it was brought to the knowledge of this Court that a compromise has been entered into between the parties and thus, the criminal proceedings stood



mitigated; therefore, the Court was pleased to substitute the arrest warrant with the bailable warrant and the same order has been grossly violated causing irreparable loss to the petitioner.

8. Learned counsel for the applicant also submits that such deliberate and willful disobedience of the concerned judicial officer need to be taken note of and appropriate action be initiated against the concerned judicial officer.

9. This Court, upon seeing the record of the case as well as hearing the learned counsel for the applicant, finds it impalpable that the Chief Judicial Magistrate would go over and above the orders of this Court, which not only amounts to grave judicial indiscipline, but also a clear violation of the orders passed by this Court. The FIR which was filed for the offences under Sections 363 & 366 of IPC resulted into the proceedings, pursuant to which a standing arrest warrant was issued against the petitioner. The petitioner was also declared an absconder, however, an impressionable argument was made by the learned counsel for the petitioner that there was a compromise between the parties and thus, he may be permitted to appear with a protection of substitution of arrest warrant with the bailable warrant. The point of compromise was categorically brought to the notice of this Court by the private respondent's counsel, who had appeared in the Criminal Misc. Petition bearing No.7164/2022 and made a statement before this Court that the complainant and the accused have entered into a compromise.

10. It was only after taking the submission of compromise on record, this Court had taken a lenient view, while following the precedent law rendered by the Hon'ble Supreme Court in the case

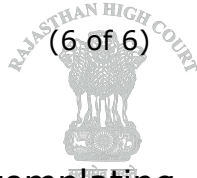




of **Inder Mohan Goswami & Another Vs. State of Uttaranchal & Others reported in AIR 2008 SC, 251** and a limited relief was granted to the extent of substitution of the arrest warrant by bailable warrant, while continuing with the adjudication.

11. Ordinarily, this Court would be extremely hesitant to initiate any action against a judicial officer for his judicial proceedings, as any decision taken by him could be open to multiple outcome of the conclusions and in the process even if some wrong decision is taken, it is amenable to jurisdiction of appropriate remedy. This Court in such circumstances is not required to call for any kind of action in the matter where a judicial order has been passed, may be erroneously as the remedy would lie elsewhere. However, in the grave factual matrix as projected in this case, this Court is left with no other option but to go into the matter to find out as to how the Chief Judicial Magistrate has taken a view of sending a person to custody even when this Court had passed the order of converting the arrest warrant into bailable warrant. The willful flouting of the orders of this Court by the learned court below is writ large on the face of the record. Such gross judicial indiscipline requires strong indulgence of this Court.

12. This Court is conscious of the fact that the right of liberty which has been violated in the present case is held in the highest pedestal being enshrined in Article 21 of the Constitution of India. Safeguarding the liberty against any illegal detention has to be dealt with in an effective manner. The consequences in curtailment of liberty contrary to law has to follow.



13. However, before contemplating any adverse order against the Chief Judicial Magistrate, this Court deems it appropriate to take the stand of the Chief Judicial Magistrate on record, and thus, the Registry is directed to call for an explanation from the learned Chief Judicial Magistrate, Banswara, who has passed the order in question, as to under what circumstances, he has flouted the order of this Court, while sending the petitioner/applicant in custody even when the arrest warrant had already stood converted by this Court into bailable warrant. The explanation be immediately called for and be filed through the Registrar (Judicial) of this Hon'ble Court under the signature of the concerned officer supported by an affidavit.

14. A copy of this order shall be placed before the Registrar (Judicial) of this Hon'ble Court today itself by the Court Master for the necessary compliance. The Registrar (Judicial) alongwith copy of this order shall also forward a copy of application filed as well as proceedings under Section 482 Cr.P.C. before this Court alongwith all the documents, to the learned Chief Judicial Magistrate, Banswara to enable him to submit his explanation along with the affidavit on or before 17.07.2023.

15. List the matter on 17.07.2023.

(DR.PUSHPENDRA SINGH BHATI), J.

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