

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 570 of 2024**

Anshul Gupta
@ Ansul Gupta Petitioner

Versus

1. The State of Jharkhand.
2. Rajesh Kumar Chowdhary Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Devesh Ajmani, Advocate.
For the State : Mr. Ashok Kumar Yadav, Sr. S.C.-I
: Mr. Anish Kumar Mishra, A.C. to Sr. S.C.-I.

02/ 16.07.2024 This matter was mentioned at 10.30 A.M. requesting for urgent listing of the matter, as it was pointed out that without following the due process of law, the petitioner has been arrested by the Jharkhand Police from Bareilly town of the State of Uttar Pradesh, that is how, the matter was directed to be notified and it was fixed to be taken up at 03.30 P.M.

2. This writ petition is filed under Article 226 of the Constitution of India and prayer is made in the main writ petition is for quashing of the entire criminal proceeding arising out of Sakchi P.S. Case No. 152 of 2021, pending in the court of learned Chief Judicial Magistrate, Jamshedpur.

3. I.A. No. 7174 of 2024 has been filed for amendment in the writ petition and the prayer is made to allow the petitioner to challenge the order dated 12.06.2024, whereby the Non-Bailable Warrant of Arrest has been issued against the petitioner. In the said I.A., further prayer is made for a direction upon the concerned authority to forthwith release the petitioner.

4. Mr. Devesh Ajmani, learned counsel appearing for the petitioner submits that the complaint case was filed alleging therein that certain TMT bars were not reached to the destination, for that the complaint case has been filed. He submits that so far as this petitioner is concerned, only allegation is made that the petitioner has introduced the complainant to the other accused persons and the petitioner is only said to be a commission agent and apart from that there is no allegation against the petitioner and the petitioner has been arrested by the

Jharkhand Police from Bareilly town of the State of Uttar Pradesh on 15.07.2024 at 08.30 P.M. He further submits that the petitioner has earlier moved before this court in A.B.A. No. 3841 of 2022, which was disposed of on 13.04.2023 observing that the petitioner has been called upon by way of issuing notice under Section 41-A of the Cr.P.C. and by way of said notice, Investigating Officer has got no intention to arrest and the petitioner was directed to comply the said order. He submits that pursuant to that, the petitioner has complied the observation of the High Court and to buttress his argument, he draws the attention of the court to para-7 of the I.A. and submits that the petitioner made several appearances before the concerned Investigating Officer as well as made postal reply to the notice issued under Section 41-A of the Cr.P.C. on 02.05.2024. He further submits that the same was neither recorded nor acknowledged or updated on the record. He submits that Annexure-2 Series is the postal records of the said transit of the reply of the notice under Section 41-A of the Cr.P.C. He then submits that on 15.12.2023, the complainant filed an application before the learned court for issuing Non-Bailable warrant of Arrest, however, the same was rejected on 17.05.2024. He submits that on 12.06.2024, the I.O. filed an application before the learned court praying therein to issue the Non-Bailable Warrant of Arrest and on the said petition, the learned court has directed to issue Non-Bailable Warrant of Arrest against the petitioner in absence of any summon against the petitioner. He submits that the case is arising out of a purely commercial transaction and the I.O. has suppressed the fact that the petitioner has complied the notice issued under Section 41-A Cr.P.C. and due to that the learned court has been pleased to issue the Non-Bailable Warrant of Arrest against the petitioner and in this way the petitioner has been arrested by the Jharkhand Police from Bareilly town of the State of Uttar Pradesh on 15.07.2024 at 08.30 P.M.

5. Mr. Yadav, learned Sr. S.C.-I, appearing for the respondent-State submits that it appears that the petitioner has not complied Section 41-A Cr.P.C. notice, in view of that the I.O. has filed an application for issuance of Non-Bailable Warrant of Arrest before the learned court and pursuant to that the Non-Bailable Warrant of Arrest has been issued by

the learned court and thereafter only the Jharkhand Police has arrested the petitioner.

6. In view of the aforesaid background, it transpires that the matter is arising out of a commercial transaction, if any, and allegation against the petitioner is only to the extent that he has only introduced the other accused persons with the complainant and the four accused persons have not been arrested and the Jharkhand Police has taken pain of travelling up to the Bareilly town of the State of Uttar Pradesh and to camp there and had arrested the petitioner.

7. In para-7 of the I.A., it has been disclosed as under:-

“7. The petitioner further states that, after the said order the petitioner made several appearances before the concerned Investigating Officer, as well as made postal reply to the 41-A Notice on 02.05.2024. However, the same was neither recorded nor acknowledged or updated on the record.”

8. Admittedly, an application was filed by the complainant on 15.12.2023 for issuance of Non-Bailable Warrant of Arrest and by order dated 17.05.2024, the learned Chief Judicial Magistrate, Jamshedpur has not issued the Non-Bailable Warrant of Arrest and the same was dismissed. However, a petition was also filed by the I.O. before the learned court and the learned court by order 12.06.2024 has been pleased to issue Non-Bailable Warrant of Arrest believing that the petitioner has not complied the order of the High Court passed in A.B.A. No. 3841 of 2022. Para-7 of the aforementioned I.A. *prima facie* clearly suggests that the petitioner has complied the said direction of the High Court and was also co-operating in the investigation.

9. How the Non-Bailable Warrant of Arrests are required to be issued by the learned court so that the liberty of a person can be maintained, was time and again considered by the Hon'ble Supreme Court as well as the High Court. Reference may be made to the case of ***Inder Mohan Goswami & Anr. Versus State of Uttaranchal & Ors.***, reported in (2007) 12 SCC 1, where in paras-53 and 54, the guidelines of issuing the Non-Bailable Warrant of Arrest has been framed by the Hon'ble Supreme Court.

10. This is a petition under Article 226 of the Constitution of India and the liberty of the petitioner is at the stake and if a case is made out of interfering and brought into the knowledge of the High Court under Article 226 of the Constitution of India, the High Court cannot be a mute spectator, if such liberty of any person is taken away in an arbitrary manner. Article 226 of the Constitution of India was considered by the Hon'ble Supreme Court in the case of *Arnab Manoranjan Goswami Versus State of Maharashtra & Ors.*, reported in (2021) 2 SCC 427 and in that case, the Hon'ble Supreme Court has held that if arbitrary case is made out and without following the procedure, any person is taken into custody, the High Court can exercise its jurisdiction under Article 226 of the Constitution of India.

11. There is no doubt that there is more description in the Cr.P.C. and once arrest is made, the remedies provided under the Cr.P.C. were required to be followed, however, at the same time, if such a case is brought to the knowledge of the High Court under Article 226 of the Constitution of India, the High Court is having the more responsibility to examine the things so that the liberty of any person cannot be jeopardized and for the preserving of the liberty, the duty castes upon the Constitutional Court.

12. Time and again, the direction was issued by the Hon'ble Supreme Court as well as this court and the State was requested to make a policy of arrest and in spite of that this is not followed. This Court in Cr.M.P. No. 1291 of 2021 [*Mr. Mahesh Kumar Chaudhary @ Mahesh Choudhary & Ors. Versus The State of Jharkhand & Ors.*] has directed the State Government to make out a policy and thereafter the Hon'ble Supreme Court in the case of *Satender Kumar Antil Versus Central Bureau of Investigation & Anr.*, reported in (2022) 10 SCC 51, again directed all the States where the policies are not made to make out the search and arrest policy. In the said order of Hon'ble Supreme Court, the order of this Court passed in Cr.M.P. No. 1291 of 2021 was also considered in para-30, in spite of that the State Government has not come forward with any such policy.

13. In the above background, the respondent-State shall take instruction in the main petition as well as in the I.A. and file counter

affidavit within three weeks.

14. The way, by which, the petitioner has been arrested by the Jharkhand Police from Barailley town of the State of Uttar Pradesh on 15.07.2024 at 08.30 P.M., for the ends of justice and desirable that the petitioner shall be released on interim bail. As such, the petitioner is directed to be released on interim bail, subject to executing a personal bond of Rs. 50,000/- (Rupees Fifty Thousand only) to be executed before the Jail Superintendent, Jamshedpur. The petitioner is directed to co-operate in the investigation and shall not make any attempt to interfere with the ongoing investigation or with the witness.

15. The Jail Superintendent and the Senior Superintendent of Police, Jamshedpur are directed to ensure that this order must be complied forthwith.

16. The certified copy of this order shall be issued during course of the day.

17. Let this matter appear on 13.08.2024.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-

[A.F.R.]