

**Karimuddin Ansari Vs. The State of Jharkhand**

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**Court :** Jharkhand

**Decided On :** Jul-28-2015

**Appellant :** Karimuddin Ansari

**Respondent :** The State of Jharkhand

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (Cr.) No.226 of 2015  
----- Karimuddin Ansari, son of late Haji Suleman Ansari Resident of Ukrid,  
P.O. and P.S. B.S. City, District- Bokaro (Jharkhand) ... .. Petitioner Versus The  
State of Jharkhand ... .. Respondent ----- CORAM: HON'BLE MR.  
JUSTICE RAVI NATH VERMA For the Petitioners : Mr. P.S. Dayal, Advocate Mr.  
Sanjay Kumar, Advocate For the State : Mr. Pran Pranay, J.C. to S.C.II -----  
C.A.V. ON:

19. 06.2015 PRONOUNCED ON:-28./07.2015 The petitioner- Karimuddin Ansari by invoking extraordinary jurisdiction of this court under Article 226 of the Constitution of India has questioned the legality of the order dated 13.01.2015 by which non-bailable warrant of arrest has been issued and also the subsequent order dated 25.02.2015 wherein the process under Section 82 of the Code of Criminal Procedure have been issued against the petitioner in connection with B.S. City P.S. Case No.206 of 2014 instituted under Sections 420, 120B and 406 of the Indian Penal Code.

2. The prosecution case, in nutshell, is that the informant Meena Jaiswal had shown her eagerness before a co-villager Pradeep Jaiswal to purchase a plot of land for construction of her house whereafter the said Pradeep Jaiswal along with Sanjay Kunwar @ Sanjay Kumar, Karimuddin Ansari (the petitioner) and Alim Ansari came to her Quarter and introduced the accused Sanjay Kunwar as owner of plot and also introduced this petitioner and another co-accused as property dealers. On the basis of their talk, the accused persons including petitioner entered into a written agreement with the informant to sale 5 decimals of land. The informant thereafter issued a cheque of Rs.1,01,000/- in the name of Sanjay Kunwar as part of consideration money and further issued another cheque on 03.08.2013 of Rs.1,00,000/- in the same name. The said Sanjay Kunwar after sometime insisted the informant to issue cheque in future in favour of Alim Ansari the co-accused. Thereafter, from time to time, other 2 W.P.( Cr.) No.226 of 20115 cheques were issued but even after several requests of the informant, sale deed was not executed. The conduct and behavior of this petitioner and other accused persons created suspicion in the mind of the informant and she apprehended that the accused persons have cheated her. Thereafter, she made enquiry from the Registry Office, Chas and came to know that the co-accused Sanjay Kunwar has already sold the land in the name of the petitioner and Alim Ansari is one of the witness of the sale deed. The informant then demanded the entire consideration amount of Rs.8,61,000/- given to the accused persons through different cheques whereafter Karimuddin Ansari returned Rs.7,30,000/- through cheque but never paid the balance amount. Hence, this complaint which was subsequently referred to police station by the order of Chief Judicial Magistrate, Bokaro for registration of a case and accordingly the aforesaid case was registered.

3. It appears from the order-sheet of the above case filed alongwith this writ petition that F.I.R. of this case was presented before the Chief Judicial Magistrate on 03.07.2014 and on next date i.e. 13.01.2015 a prayer was made in writing by the Investigating Officer for issuance of warrant of arrest against the petitioner and the same was issued and without waiting for any service report, the process under Section 82 of the Code of Criminal Procedure (in short the Code) was issued.

4. Mr. Dayal, learned counsel appearing for the petitioner has assailed the two orders by which warrant of arrest and subsequently processes were issued against this petitioner and submitted that the court below without applying its judicial mind firstly issued the non-ailable warrant and without following the mandates of Section 82 of the Code, issued processes. It was also submitted that on mere perusal of order-sheets of the two dates 13.01.2015 and 25.02.2015, it would appear that both the orders are non-speaking and were issued in a mechanical manner, therefore, both the orders are liable to be quashed.

5. Contrary to the aforesaid submissions, learned counsel representing the State submitted that after filing of an application by 3 W.P.( Cr.) No.226 of 20115 the Investigating Officer for issuance of warrant of arrest as the petitioner was evading his arrest, the court below issued the non-ailable warrant of arrest and the subsequent order of issuance of process was also issued on a petition filed by the Investigating Officer with the execution report. As such there is no illegality in the order impugned.

6. After hearing both the counsels for the petitioner as well as the State and after going through the record, I find that on the requisition filed by the Investigating Officer, non-ailable warrant of arrest was issued on 13.01.2015 and by subsequent order dated 25.02.2015 again on a petition filed by the Investigating Officer of the case, the process under Section 82 of the Code was issued without recording any satisfaction that in the facts and circumstances it is warranted.

7. For better appreciation of the issue involved in this writ, a reference of Section 73 of the Code is necessary which reads as follows:- 73. Warrant may be directed to any person - (1) The Chief Judicial magistrate or a Magistrate of the First Class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-ailable offence, and is evading arrest. (2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge. (3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be

taken before a Magistrate having jurisdiction in the case, unless security is taken under Section 71.

8. From bare perusal of the above Section, it appears that it confers a duty upon the Magistrate to issue warrant of arrest of three classes of persons namely (i) escaped convict (ii) a proclaimed offender (iii) a person who is accused of non-bailable offence and is evading arrest.

9. The Honble Supreme Court in a case Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another; 2011(4) 4 W.P.( Cr.) No.226 of 20115 JLR285(SC) while considering the issue of execution of non-bailable warrant in Paragraph 9 held as follows:- 9. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The Courts have to be extra-cautious and careful while directing issue of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other. Indeed, it is a complex exercise. As Justice Cardozo puts it on the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice. Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and

the possibility of his absconding.

10. In a recent case *Arnesh Kumar Vs. State of Bihar and anr.* reported in 2014 (3) JCBJ352(SC), the Honble Supreme Court laid down several guidelines with respect to the arrest of an accused in Paragraph 12 of the said judgment which is reproduced hereinbelow:

12. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:- 5 W.P.( Cr.) No.226 of 20115 (1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C. (2) All police officers be provided with a check list containing specified sub-clauses under Section 41 (1) (b) (ii); (3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/ producing the accused before the Magistrate for further detention; (4) The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention; (5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing; (6) Notice of appearance in terms of Section 41A of Cr.P.C be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing; (7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial Jurisdiction; (8) Authorising detentions without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court. (11) Apparently, the court of Chief Judicial Magistrate, Bokaro has not considered the mandates given in the

above two judgments and in a mechanical way passed the order without showing any reason or recording any satisfaction regarding issuance of non-bailable warrant and also issued the process under Section 82 of the Code. The submission of learned counsel representing the State that on petition filed by the Investigating Officer showing that the petitioner was evading arrest non-bailable warrant was issued, appears to be against the mandates of the above two Sections 73 and 82 of the Code. Hence, I6W.P.( Cr.) No.226 of 20115 am constrained to hold that the two orders of issuance of non-bailable warrant and the issuance of process by the Chief Judicial Magistrate are liable to be quashed.

12. Regard being had to be facts and circumstance as discussed above, I find merit in this writ application. Accordingly, it is allowed. The order dated 13.01.2015 by which the non-bailable warrant of arrest was issued and the subsequent order dated 25.02.2015 by which process under Section 82 of the Code have been issued against the petitioner in connection with B.S. City P.S. Case No.206 of 2014 corresponding to G.R. No.904 of 2014 are, hereby, quashed. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 28th July, 2015 Anit/N.A.F.R.

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