

(2012) 12 AHC CK 0057

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 33538 of 2012

Devendra Singh

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 73, 82, 83
Penal Code, 1860 (IPC) — Section 307, 323, 325, 364, 504

Citation : (2013) 1 ACR 1079 : (2013) 2 ADJ 107

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : A.C. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Sunil Hali, J.—By means of this application, applicant has question the order dated 10.11.2011 passed by Chief Judicial Magistrate, Ghaziabad in Case No. 9533 of 2011 (State v. Subhash Yadav), under Sections 307, 364, 504, 325 and 323 IPC, P.S. Sahibabad, District Ghaziabad, whereby the non-bailable warrants has been issued against him. An application was filed by the Investigating Officer, P.S. Sadar Bazar, District Meerut seeking presence of the accused persons. It is stated in the application that applicant is named accused in the FIR but he is not co-operating with the investigation and is absconding. He is evading arrest by hiding at various places. In the application, it is also prayed that proceedings of Section 82/83 Cr. P.C. be also initiated against him.

2. Heard learned counsel for the parties and perused the material on record.

Section 73 of the Cr. P.C. is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, a person who is accused of a non-bailable offence and is evading arrest. However, this power is not to be exercised exclusively for the purpose of seeking presence of the accused before the Investigating Officer. Once any such

warrant is issued the Magistrate may either release him on bail or authorise his detention in custody u/s 167 of the Code. Power of the Magistrate is limited in this behalf. However, in order to reach to this stage, it is necessary to secure the presence of the accused and in this behalf warrant can be issued by the Magistrate securing the presence of the accused. In case accused despite non-bailable warrants remains absconding then the Court has power to proceed u/s 82/83 Cr. P.C.

In the present case, accused according to the application filed by the Investigating Officer is evading arrest and is not participating in the investigation. For seeking his presence and initiating proceedings u/s 82/83 Cr. P.C. the Magistrate is obliged to issue warrant u/s 73 of the Code seeking his presence. However, once his presence is sought it is for the Magistrate to decide on the basis of the material collected against such person to find out whether the accused is to be handed over to the police custody or judicial custody or release him on bail depending upon the facts of each case.

In the present case, that situation is yet to arise as the accused is not participating in the investigation, therefore the Magistrate was well within its right to issue non-bailable warrant against the accused person.

In find no force in this application and it is accordingly dismissed.