

(2020) 01 PAT CK 0400

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 101 Of 2020

Jitendra Singh And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 73, 82
Indian Penal Code, 1860 — Section 34, 120(B), 307, 323, 332, 333, 342, 353, 504, 506
Bihar Prohibition And Excise Act, 2016 — Section 45

Citation : (2020) 01 PAT CK 0400

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Awadhesh Kumar, Sheo Shankar Prasad

Final Decision : Disposed Of

Judgement

Heard learned counsel for the petitioners and learned AC to SC-8 at length.

Petitioners in the present case are seeking the following reliefs:

"(I) Quashing of the orders dated 29.03.2019 and 07.01.2020 passed by the learned Court of 6th Additional Sessions - cum - Special Judge, Excise, Saran whereby, merely on the basis of an application of the Investigating Officer, warrant of arrest (under Section 73 of the Cr.P.C.) and proclamation order (under Section 82 of the Cr.P.C.), respectively , have been issued against the petitioners, in connection with Avtar Nagar P.S. Case No. 135/2017 dated 25.09.2017, which has been registered under Sections 342, 323, 332, 333, 353, 504, 506, 34, 307, 120B of the Indian Penal Code and under Section 45 of the Bihar Prohibition and Excise Act, 2016.

(ii) Stay of the order dated 29.03.2019 and 07.01.2020, during the pendency of the criminal writ application, and

(iii) For grant of any other relief/reliefs, as may deem fit and proper in facts and

circumstances of the case."

In course of argument, learned counsel for the petitioners submits that neither in the order dated 29.03.2019 nor in the order dated 07.01.2020, the learned Special Judge, Excise, Saran has recorded any reason for allowing the application for issuance of warrant of arrest, as also the process under Section 82 Cr.P.C. filed by the Investigating Officer in Avtarnagar P.S. Case No. 135/2017.

Learned counsel submits that the orders impugned being wholly without reasons are liable to be set-aside. In this connection, learned counsel has relied upon Sections 73 & 82 of the Code of Criminal Procedure. In his submission, unless a person such as present petitioners are said to be evading arrest, only because they are an accused in a non-bailable offence, in terms of Section 73 of the Cr.P.C., the learned Special Judge, Excise, was not justified in issuing a warrant of arrest.

Learned counsel further submits that under Section 82 Cr.P.C. there must be 'reason to believe' (whether after taking evidence or not) that any person against whom a warrant has been issued by the court has absconded or is concealing himself so that such warrant cannot be executed, only upon such 'reason to believe' the court may publish a written proclamation in terms of Section 82 Cr.P.C. Learned counsel submits that Section 82 Cr.P.C. talks of subjective satisfaction of the learned court.

On the other hand, learned counsel for the State has drawn the attention of this court towards the First Information Report lodged by the ASI of Police, who was posted at the relevant time in Avtarnagar Police Station. It is alleged that on 25.09.2017, on an information that illicit liquors in huge quantity are being transported by the present petitioner no. 1 who had earlier also gone to jail in connection with the said offence, a raid was conducted and in course of that raid the police personnel were attacked and assaulted.

Learned counsel submits that the F.I.R. was lodged on 25.09.2017, but the accused persons - petitioners did not surrender in connection with the case and the efforts taken by the Investigating Officer to find out the petitioners went in vain because the petitioners were evading arrest. Such facts, according to learned counsel, are mentioned in course of investigation by the Investigating Officer, and only thereafter, on 29.3.2019 he filed an application in the court of learned Special Judge, Excise, to issue a warrant of arrest.

Learned counsel further submits that on 29.03.2019, no application for anticipatory bail on behalf of the petitioners was pending in any court of law and this fact has been admitted by learned counsel for the petitioners in course of hearing, therefore, the Investigating Officer has rightly requested learned court below to issue a warrant of arrest.

As regards the process issued under Section 82 Cr.P.C., learned counsel for the State submits that although the order dated 07.01.2020 does not talk of any

reason, however this court may appreciate that the step for issuance of process under Section 82 Cr.P.C. was taken only after a lapse of substantial period from the date of issuance of the warrant of arrest as the petitioners had concealed themselves and were not submitting to the court.

Having heard learned counsel for the petitioners and learned counsel for the State and upon perusal of the records, this Court is of the considered opinion that so far as the issuance of warrant against the petitioners is concerned, no interference is required by this court, inasmuch as it would appear from the facts of the present case that the F.I.R. was lodged as back as on 25.09.2017 but the petitioners were not surrendering in the Court and the Investigating Officer was unable to trace them, hence, the petitioners being an accused in a non-bailable offence and was evading the arrest, if the Investigating Officer filed an application giving those informations to the learned court below and thereupon the learned court below has passed the order dated 29.03.2019, it cannot be interfered with.

So far as the submission that no reason has been shown in the order dated 29.03.2019 is concerned, again this court is of the opinion that the reasons are apparent on the face of the record, learned counsel for the petitioners has admitted in course of hearing that as on 29.03.2019 the petitioners had not filed any anticipatory bail application and if this was the position and the Investigating Officer informed the learned court below that the petitioners were evading the arrest and on being satisfied the learned court has passed the impugned order, no separate reason is required to be found in the order dated 29.03.2019.

so far as the order dated 07.01.2020 issuing process under Section 82 Cr.P.C. is concerned, this court is in agreement with the submission of learned counsel for the petitioners that Section 82 Cr.P.C. may be triggered only when the court has reasons to believe that the accused persons are absconding and have concealed themselves so that the warrant cannot be executed against them. Such reasons are to be based on subjective satisfaction of the learned court and it would be required to be shown from the order passed by the court below that the court had upon perusal of the materials placed before the court reasons to believe that the accused were absconding. The order dated 07.01.2020 does not show any reason in terms of Section 82 Cr.P.C. This being the position, this court sets-aside the order dated 07.01.2020 by which process under Section 82 Cr.P.C. has been issued against the petitioners.

So far as the order issuing warrant of arrest is concerned, no interference is made and it will be open for the Investigating Officer to execute either the said warrant of arrest or to seek a fresh warrant of arrest and proceed further, as the case may be, in accordance with law.

This Writ Application stands disposed off accordingly.