

(2022) 09 GUJ CK 0146

In the Gujarat High Court

Case No : R/Special Criminal Application No. 8272 Of 2021, Criminal Misc.
Application (For Interim Relief) No. 1 Of 2022

Kirtibhai Jivanbhai Bharvad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 26-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Criminal Procedure, 1973 — Section 41, 41(1)(b), 60, 69, 70, 73, 81, 82, 82(1), 83, 86, 87, 90, 155, 438, 482
Indian Penal Code, 1860 — Section 114, 120B, 201, 380, 384, 406, 409, 465, 468, 471, 477, 479

Citation : (2022) 09 GUJ CK 0146

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Bb Naik, Dipak R Dave, Anshin Desai, Parth

Final Decision : Disposed Of

Judgement

Ilesh J. Vora, J

1. By this application under Article 226 read with Article 227 of the Constitution of India and Section 482 of Criminal Procedure Code, 1973, the applicant-original accused is praying for setting aside the impugned order dated 04.12.2020 passed by Chief Judicial Magistrate, Gandhinagar, whereby, the Court has issued non-bailable warrant of arrest under Section 70 of the Code, which has been confirmed by the Revisional Court vide its order dated 03.08.2021 passed by Additional Sessions Judge, Gandhinagar in Criminal Revision Application No.33 of 2021.

2. On 04.12.2020, a first information report came to be lodged with Kalol Police Station, District: Gandhinagar for the offence punishable under Sections 380, 406, 409, 477, 384, 457, 120B, 201 and 114 of the IPC. The applicant herein is one of the accused persons (accused no.7) named in the FIR. Since lodgment of

the FIR, the applicant being accused of non-bailable offence, evading his arrest. It is case of the prosecution that, after extensive search and efforts made by the investigating officer, the applicant-accused was not traceable at his residential address and investigating officer could not secure the presence of the applicant-accused. In such circumstances, P.I., LCB, Gandhinagar filed an application for issuance of non-bailable warrant as contemplated under Section 70 of the Cr.P.C. with a specific note that it is necessary for initiation of the proceedings declaring the accused as proclaimed offender as contemplated under Section 82 and 83 of the Cr.P.C. The CJM, Gandhinagar vide its order dated 24.02.2021, issued non-bailable warrant as prayed for. The applicant-accused, being aggrieved with the order, challenged it before the Sessions Court, Gandhinagar by filing Criminal Revision Application No.33 of 2021 and the same came to be rejected vide its order dated 03.08.2021. The proclamation is also published under Section 82(1) of the Code by the CJM, Gandhinagar vide its order dated 09.06.2021.

3. In the aforesaid facts, the present petition is filed under Article 226 and 227 read with Section 482 of Cr.P.C., invoking extra ordinary jurisdiction of this Court and has prayed the following reliefs:

“(A) be pleased to issue an appropriate writ, order or direction to quash and set aside order dated 03.08.2021 passed by learned Additional Sessions Judge, Gandhinagar, in Criminal Revision Application No.33 of 2021 rejecting the revision application of the petitioner, as also order dated 24.02.2021 passed by the learned Chief Judicial Magistrate Court, Gandhinagar in Criminal Case No.1025 of 2021 issuing warrant under Section 70 of the CRPC against the petitioner and all further and other consequential proceedings on the basis may kindly quashed and set aside;

(AA) be pleased to quash and set aside order dated 09.06.2021 passed by learned CJM, Gandhinagar in Criminal Case No.1025 of 2021 below Exh.21;

(B) Pending the admission hearing and final disposal of the present petition, this Hon’ble Court may be pleased to stay further execution, implementation and operation of order dated 03.08.2021 passed by learned Additional Sessions Judge, Gandhinagar in Criminal Revision Application No.33 of 2021, as also order dated 24.02.2021 passed by the learned Chief Judicial Magistrate Court, Gandhinagar in Criminal Case No.1025 of 2021;

(BB) Pending admission, hearing and final disposal of the present petition, this Hon’ble Court may be pleased to stay the execution, implementation and operation of the order dated 09.06.2021 passed by learned CJM, Gandhinagar in Criminal Case No.1025 of 2021 below Exh.21;

(C) Be pleased to pass such other and further orders which may deem fit in the interest of justice in favour of the petitioners.”

4. This Court has heard Mr. B.B. Naik learned Senior Counsel assisted by Mr. D.R. Dave, learned counsel appearing for and on behalf of the applicant namely

Kiritbhai Rabari, Mr. Anshin Desai, learned Senior Counsel assisted by Mr. Parth Contractor, learned counsel appearing for the original informant and Mr. Manan Maheta, learned APP for the respondent-State.

5. Brief facts giving rise to file the present petition can be summarized as under:

(i) On 04.12.2020, a first information report came to be lodged with Kalol Police Station, District: Gandhinagar for the offence punishable under Sections 380, 406, 409, 477, 384, 457, 120B, 201 and 114 of the IPC. The applicant herein is one of the accused persons (accused no.7) named in the FIR.

(ii) according to say of the first informant, the land bearing survey no.374, situated at Village: Rancharda, Taluka: Kalol, Dist: Gandhinagar belongs to joint ownership his brother and other family members. The accused Ranchhod Patel in connivance with Kalaji Becharji Thakore, prepared a notarized forged power of attorney and executed a registered sale-deed in favour of accused Chandrakant Ramanlal Patel in the year 2002. The informant, lodged a private complaint before the Kalol Court under Section 465, 471, 468, 479 and 114 of the IPC. During the inquiry and investigation of the criminal case, the specimen thumb impression of the informant and signature thereof along with the original power of attorney sent to Fingerprint and Handwriting Expert and it was found that, the thumb impression was not of the complainant and power of attorney is not genuine. During the course of investigation, the original power of attorney, the other relevant documents had been seized as muddamal and produced before the Court concerned and after receiving the FSL Report, charge-sheet came to be filed under Section 465, 471, 468, 479 and 114 of the IPC, which came to be registered as C.C. No.1931/2004.

(iii) The original informant has also filed a civil suit for cancellation of the sale-deed wherein on 17.08.2006, pursuant to the joint undertaking, the parties were directed to maintain status-quo with regard to disputed land.

(iv) Based on the power of attorney of Chandrakant Patel, accused Swetaben transferred the land by way of Gift Deed alleged to have been executed in favour of her brother Saumil Prabodhbhai Patel.

(v) In the year 2006, the role of accused no.5, 6 and 7 came into picture as title notice for purchasing the disputed land published in the local newspapers on 28.06.2006. The original informant being an owner of the land, responded to the title notice by submitting reply stating therein that, land cannot be dealt with or transferred in view of the status-quo order and other contentions with regard to forged power of attorney etc. being pleaded. Despite this fact, the present applicant-accused and accused no.5, 6, purchased the disputed land from the accused no.2 to 4 by way of registered sale-deed allegedly executed in the year 2007.

(vi) The Criminal Case was not on board of the Court concerned and date is not fixed for adducing the evidence. Meanwhile, in the year 2018, the first informant

went to the Court to get necessary papers from the criminal case which are part of the charge-sheet as the present applicant and accused no.5 and 6 have dispossessed him from the land. He had also applied for the necessary documents so as to enable him to initiate appropriate legal proceedings. In these circumstances, he came to know that, the original case papers like power of attorney and relevant documents and FSL Report along with file of the case are missing and not traceable. The original informant submitted an application to the Police Authority, Gandhinagar to act accordingly, and also filed a writ petition before this Court for issuance of necessary directions. During the proceedings of the writ petition, the Coordinate Bench of this Court passed necessary directions upon the Kalol Court and Principal District Judge, Gandhinagar to inquire into matter and submit a detailed report and if need so arise, initiate departmental inquiry against the Court employees. During the proceedings of writ petition, the interim report was submitted by Gandhinagar Court and it was revealed that, the Court employee was involved in the matter.

(vii) In the facts as referred above in para-(v) and (vi), the FIR came to be registered with Kalol City Police Station for the offence punishable as referred above against seven persons including the Court employee of Kalol Court, mainly on the ground that, the accused have hatched the conspiracy, to get the possession of the land and for financial benefit and to overcome the further proceedings, the offence of theft, causing disappearance of the original case papers allegedly seized as muddamal with an intention of screening the offender from legal punishment.

(viii) The regular bail application of accused Jeram Rabari filed after charge-sheet came to be rejected by this Court and was granted bail by the Apex Court only on the ground of age and since he was in custody for almost one year. The accused no.6 Malji Rabari is evading arrest. The regular bail application of accused no.1 Ranchhod Patel, after charge-sheet rejected by this Court and before the Supreme Court, he has withdrawn his application, whereas, the other co-accused except the present applicant have been enlarged on bail.

(iv) The applicant Kirit Rabari, filed quashing petition before this Court, wherein rule has been issued without granting interim relief with a liberty to file anticipatory bail application. The anticipatory bail application filed before the Gandhinagar Court came to be rejected. Against the order, he moved an application seeking anticipatory bail before this Court which is pending for hearing.

6. In the aforesaid facts, the investigating agency, was in search of the applicant herein for investigation as he is involved in the non-bailable offence and he is evading arrest. An application was filed by the P.I., LCB Police Station on 04.12.2020 before the CJM, Gandhinagar to grant warrant of arrest of the applicant as contemplated under Section 70 of the Code. In the application, narration of the contents of FIR being disclosed and further, it was mentioned that, due to non-availability of the present applicant, charge-sheet yet to be filed

against the accused and despite, several efforts by different teams of the police personnel, the applicant could not be traceable and is concealing himself and is absconding since long. It is further stated that, to give wide publicity of the absconding applicant-accused, the warrant as contemplated under Section 70 is required to be issued. The investigating officer also stated that, the warrant is necessary to declare the applicant as proclaimed offender as contemplated under Section 82 and 83 of the Cr.P.C. The Court of CJM, after considering the case diary, case records, recorded that, the applicant is named in the FIR and till date, inspite of all efforts made by the investigating agency, he could not be traceable and concealing himself to avoid the arrest. The learned CJM recorded that, for further proceedings as contemplated under Sections 82 and 83 of Cr.P.C., the application deserves consideration and accordingly, issued NBW for arrest of the applicant. It is to be noted that, vide application dated 04.06.2021 filed by the investigating agency, inter alia, praying to declare the applicant-accused as proclaimed offender, the Court of CJM issued a written proclamation as contemplated under Section 82 of the Cr.P.C.

7. In the aforesaid facts, the learned Senior Counsel Mr. B.B. Naik submitted that, the proceedings under Section 70 read with Section 82 are initiated only at the behest of the complainant and the investigating agency acted in collusion with the complainant. It was submitted that, initially the offence of forged power of attorney taken place in the year 2002 and for which the private complaint was filed and the case is pending till date and the applicant is not party to the said criminal case. The present FIR is on the premise that the case record of criminal case and necessary original muddamal case papers are missing from the Court which has taken place after 23.06.2011. He further submitted that, the complainant has intentionally mentioned in the FIR the year 2011 of the offence as the accused no.5, 6 and 7 jointly purchased the land in question by sale-deed dated 02.01.2007. In these circumstances, it was submitted that, to implicate the present petitioner and accused no.5 and 6, the FIR in question is filed which is a second FIR of the incident and therefore, it is evident that the applicant has nothing to do with the missing of record from the Court.

8. Mr. B.B. Naik, learned Senior Counsel further submitted that, after registration of FIR, the applicant immediately approached this Court by filing Criminal Misc. Application No.19856 of 2020 under Section 482 of Cr.P.C., for quashing the said FIR wherein by order dated 28.01.2021, this Court has issued the rule with a liberty to approach the bail Court concerned. Pursuant to the said order, the applicant approached the Sessions Court, Gandhinagar under Section 438 of the Code by way of filing application praying for grant of anticipatory bail which came to be rejected by order dated 18.03.2021. Against the order of Sessions Court, the applicant herein approached this Court by filing CRMA No.5891 of 2021 before this Court under Section 438 of the Code for grant of anticipatory bail which is pending for hearing. It is in this context, it was submitted that, pending the anticipatory bail before the Sessions Court, the investigating officer filed an application dated 19.02.2021 under Section 70 of the Code for issuance of non-

bailable warrant against the applicant before the CJM Court, Gandhinagar and while submitting the application, the investigating officer did not disclose that the anticipatory bail application is pending before the Court. Thus, therefore, he urged that, the order by the CJM Court is passed on suppression of the facts by the investigating officer and therefore, the learned Court while passing the order, did not take into consideration relevant factors for issuance of non-bailable warrant.

9. It was further submitted by Mr. B.B. Naik, learned Senior Counsel that, while passing the order by Courts below, have not taken into consideration to the fact that no prima-facie case is made out for the alleged offence as the applicant is nowhere involved in the entire controversy as alleged and he has no role to play with regard to issue of missing Court records and there is no any evidence to this effect collected during the course of investigation. He further submitted that, neither the applicant would be benefited by virtue of missing of Court papers, nor the applicant has got any benefit.

10. It was further submitted that the Court below failed to appreciate the aforesaid aspects while issuing the non-bailable warrant and sufficient reasons have not been assigned and order passed mechanically without application of mind in a casual manner upon asking by the investigating officer. He urged that, while passing the order for issuance of N.B.W., the Court is required to apply his judicial mind and it is not a routine matter to issue the warrant as the same is concerning the personal liberty of a citizen. Reliance is placed on Indarmohan Goswami Vs. State of Uttaranchal reported in (2007) 12 SCC 1 to contend that, the Courts have to be extremely careful before issuing the non-bailable warrant as the same involves interference with the personal liberty. Relying on the observations made in the case of Navalsinh Parmar Vs. State of Gujarat (CRMA No.27331/2017, Coram: the then Hon'ble Mr. Justice J.B. Pardiwala), to content that, an order under Section 73 of Cr.P.C. Which is to make an in road in the personal liberty of an individual, should not be passed casually, but only after taking into consideration the totality of circumstances, contents of the application and after recording the satisfaction by the Court that there is sufficient allegation against the person concerned of being an accused of a non-bailable offence and is evading arrest. It is in this context, learned Senior Counsel submitted that the Courts below have not recorded its satisfaction that there is prima-facie case against the applicant which requires the issuance of non-bailable warrant. In such circumstances, both the orders of Courts below are suffering from complete non-application of mind and are require to be quashed and set aside.

11. Learned Senior Counsel further submitted that, Court cannot issue warrant of arrest, in aid of investigation. In support of this contention, reliance is placed upon the decision of Apex Court in case of State through CBI vs. Dawood Ibrahim Kaskar and another reported in (2010) SCC 438 to contend that, Court has no jurisdiction or power to issue either the warrant under Section 70 of the Code or proclamation under Section 82 of Code for purpose of production of the

accused in the aid of investigation.

12. Learned Senior Counsel submitted that, the maximum punishment for the alleged offence is up to seven years and fine. Referring to Section 41(1)(b) of the Code, he submitted that, wherever the offences are punishable which may be less than seven years or may extend up to seven years, it is not always necessary for the police officer to arrest the person. In support of this contention, reliance is placed in the case of *Arnesh Kumar Vs. State of Bihar and others* reported in (2014) 8 SCC 273 to contend that, in the present case, the investigating officer has failed to show any reasons at the initial stage that why the petitioner is required to be arrested in the case and has also not mentioned in the application filed before the CJM Court for issuance of warrant. Thus, therefore, he submitted that, the issuance of warrant is in clear violation of provisions laid down by the Hon'ble Supreme Court in the judgment of *Indarmohan Goswami* (supra).

13. Learned Senior Counsel submitted that, when the application filed by the accused under Section 438 of the Code, he cannot be treated as a person absconding, as at the time of submitting application under Section 70, the bail application under Section 438 was pending before the Sessions Court.

14. In the aforesaid contentions, the learned Senior Counsel submitted that, case is made out to exercise the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India as the Courts below have committed an error of law while passing the impugned orders which require to be quashed and set aside.

15. Per contra, Mr. Anshin Desai, learned Senior Counsel assisted by Mr. Parth Contractor for the original informant and Mr. Manan Maheta, learned APP for the respondent- State reiterating the contentions of the sworn affidavit of the informant, contended that the impugned orders suffers from no illegality as sufficient efforts were made to seek the presence of the applicant and sufficient opportunity was granted to him by the investigating officer. It was submitted that, the learned Court of CJM while passing the order, considered the case diary and case records as well as statements of family members of the applicant and therefore, sufficient evidence had been placed before the Court to show that the applicant was avoiding to join with the investigation and considering the serious allegations, the Court was justified in issuing NBW under Section 70 of the Code.

16. On factual aspect, Mr. Desai, learned Senior Counsel submitted that the applicant is charged with criminal conspiracy in causing disappearance and theft of entire original court record of Criminal Case No.1931 of 2004 and Criminal Inquiry No.26 of 2003 of Kalol Judicial Magistrate Court. In such circumstances, the offence is serious in nature and non-bailable. Reliance has been placed on the case of *Naveen Singh Vs. State of U.P.* reported in (2021) 6 SCC 191, to contend that, if the Court record is manipulated and/or forged, it will hamper administration of justice.

17. Mr. Desai, learned Senior Counsel further submitted that, in the writ petition filed by the complainant for necessary directions, the Principal District Judge, Gandhinagar placed on record FSL Report pertaining to accused Bhavesh Shah, wherein, involvement of the applicant emerged in the alleged act of destruction of record with intention to derive the benefit.

18. It was submitted by Mr. Desai, learned Senior Counsel that, there is a specific contention raised in the application preferred by the investigating officer that the issuance of warrant is essential for giving wide publication and for the purpose of initiating proceedings under Sections 82 and 83 of the Cr.P.C. and thereafter, proclamation vide order dated 09.06.2021, has been issued and therefore, warrant under Section 73 can be always issued for initiation of the proceedings under Sections 82 and 83 of the Code which is sine qua non for declaring a person as a proclaimed absconder. Thus, he urged that the applicant is evading the arrest and in such circumstances, it was within the power of the investigating officer to obtain arrest warrant under Section 73 of the Code which is of general application and in the course of investigation, Court can issue a warrant to apprehend the person who is accused of non-bailable offence and is evading arrest.

19. It was submitted by Mr. Desai, learned Senior Counsel that, the applicant was aware about the issuance of the warrant. The anticipatory bail application has been rejected by the Sessions Court. In the quashing petition filed by the applicant, no interim relief in favour of the applicant was granted and therefore, mere pendency of the application before the High Court would not amount to stay of the proceedings pending before the Court and therefore, filing of application before different forums and/or availing remedy before different forums would not entitle the accused to avoid the investigation.

20. Relying on the case of Nizamuddin Fakruddin Kazi vs. State of Gujarat reported in (2016) 1 GLR page 208, learned Senior Counsel contended that, if the rule of law is required to prevail, the machinery or the procedure as contemplated in the statutory provision which has been enacted by the legislature has to be given effect by which the purpose is sought to be achieved and it cannot be interpreted in a way to curtail or negate the powers statutorily provided by the legislature and therefore, when requisition filed by the police disclosing that the applicant is accused of non-bailable offence and is evading arrest, the learned CJM Court after considering the case records, case diary and provisions of Sections 82 and 83 of the Code, rightly recorded that, the case deserves consideration for issuing warrant under Section 70 and the Revisional Court has also passed reasoned order while rejecting the application.

21. In the aforesaid contentions, Mr. Desai, learned Senior Counsel submitted that, learned Court below, after due application of mind and considering the totality of facts and circumstances of the case, passed the order by issuing warrant under Section 70 of the Code and the same has been upheld by the Revisional Court and therefore, no any exception circumstances exist to interfere

with the concurrent findings given by the Courts below and therefore, the application may not be entertained and same is require to be dismissed.

22. Heard at length the counsel for the respective parties and perused the material placed on record.

23. Having heard the learned counsel for the respective parties and upon perusal of the case records, the only question, falls for my consideration is whether the applicant is entitled to the relief prayed for in this application.

24. Before advertng to the issue, let us examine the statutory provisions pertaining to the issuance of warrant. Chapter-VI of the Code, captioned as "process to compel appearance, divided into four parts:

Part A – Summons (Sections 60-69)

Part B – Warrant of Arrest (Sections 70-81)

Part C- Proclamation and Attachment (Section 82-86)

Part D – Other Rules regarding processes (Sections87-90)

25. Part-B, deal with the issuance of warrant, which empowers the Court to issue warrant for the arrest of any escaped convict, proclaimed offender or any person who is accused of a non-bailable offence and is evading arrest.

26. Part-C of chapter-vi deal with coercive measures which can be employed by the Court to apprehend a person in respect of whom a warrant of arrest has been issued under Section 73 of the Code. Section – 82, provides that, once the Court is satisfied that, any person against who a warrant has been issued, has absconded or concealing himself so that such warrant cannot be executed, then, the Court can issue a proclamation against such person and the said proclamation needs to be duly published as provided. It is settled law that, it is necessary that, the Court has to satisfy on the basis of material that, a person despite having knowledge of proceedings, is avoiding the process issued. It is beneficial to refer the case of Nachi Exports Vs. Thiruveadam & Sons, 2008 CrLJ 278 (NOC) (Mad.), the High Court held that, concerned Court should consider factor such as "the accused was well aware of the NBW of arrest, issued against him and also regarding the efforts taken by the officer concerned for its execution, and that obviously the accused was evading arrest, by adopting foul play or tactful means."

27. In the facts of the present case, pursuant to the requisition submitted by the police, the Court of CJM issued warrant under Section 70 of the Code. On perusal of the impugned order, it transpires that, sufficient efforts were made to seek the presence of the applicant for investigation and sufficient opportunity was also granted to him and despite the notices served, he did not appear. The Court of CJM also considered the contents of the application, wherein it is specifically mentioned that, despite all efforts the accused could not be arrested and also mentioned therein that, for initiation of the further proceedings as contemplated

under Section 82(1) of the Code, the arrest warrant is essential. In the requisition, the contents of the FIR also narrated. In such circumstances, the trial Court has considered the requisition which was in detail, incorporating the facts of the FIR, efforts made for securing presence of the applicant and subsequent conduct of him and considering the further investigation and process under Section 82(1) of the Code, the CJM Court thought it fit to issue NBW of arrest of the applicant. This Court is of the view that, considering the reasons assigned by the CJM Court, it appears that, the Court below was aware about the allegations made against the applicant in the FIR as well as requisition submitted by the police and Court was satisfied that for further process, to be undertaken under Section 82(1) of the Code, the issuance of warrant is essential.

28. At this stage, reference may be made to the decision of the Supreme Court in the case of State through CBI vs. Dawood Ibrahim Kaskar (supra), the Apex Court held that, Section 73 confers the power upon a Magistrate to issue a warrant and that it can be exercised during investigation also, can be best understood with reference to Section 155 of the Code. It is further held that, if the accused evade the arrest, the only course left open to the I.O. To ensure his presence would be to ask the Magistrate to invoke his powers under Section 73 and thereafter, those relating to proclamation and attachment. It is further held that, in such eventuality, the Magistrate can legitimately exercise his powers under Section 73, for the persons to be apprehended is "accused of a non-bailable warrant and is evading arrest."

29. In light of the principle propounded by the Apex Court and considering the facts of the present case, unless warrant under Section 70 of the Code is not issued by the Court, the investigating agency would not in a position to ask the Court for necessary action of proclamation as provided under Section 82(1) of the Code. In such circumstances, the requisition of the police was not only for issuance of the warrant of arrest, but, for further process under Section 82(1) of the Code for which specific note being made by the police in the requisition application dated 04.12.2021. Thus, the Court of CJM has not committed any error of law while passing the order.

30. It is the contention of the applicant that, Court has not recorded its satisfaction with regard to role of the applicant in the alleged offence and order is passed mechanically without application of mind. This Court is not impressed with the contention canvassed by the applicant. On perusal of the findings recorded by the Court of CJM and Revisional Court, it is evident that, both the Courts below have considered the peculiar facts and circumstances of the case and considering the legal provisions and the allegations made in the FIR which have been incorporated in the application of requisition. The applicant is charged with criminal conspiracy and destruction of evidence. It is to be noted that, in the year 2006-07, the applicant and his two aid, purchased the disputed land from the co-accused. Before sale-deed, public notice was published and it was responded by the original informant stating the status-quo order passed by the

Civil Court and the factum of forged power of attorney etc. Despite this, they have purchased the land. The another factor require to be considered is, the earlier criminal case and its original records are missing from the Court. It is very serious thing which will hamper administration of justice. This Court is restrained to discuss further as the quashing petition filed by the applicant-accused is pending and also the anticipatory bail application before this Court. So further discussion may prejudice the right of the applicant-accused.

31. In the aforesaid discussion, considering the reasons recorded by the Courts below, it cannot be said that, Courts have not considered the allegations leveled against the applicant in the alleged FIR and without application of mind, in a casual manner, the requisition accepted by the Court.

32. Now let us deal with the another contention raised by the applicant. It is stated that, at the relevant time, the police did not inform the Court about the fact of pendency of anticipatory bail and considering the pendency of the application, Court could not have passed the issue of NBW. In the facts of the present case, the applicant was aware about the proceedings undertaken by the police for obtaining warrant. It is to be noted that, either in the quashing petition, or, in the proceedings of anticipatory bail, the applicant is not granted either protection or interim relief against the criminal proceedings. Thus, merely the applicant is pursuing his legal remedies does not mean that the police is precluded from taking legal recourse available under the law. It is their statutory duty to investigate the case. Since 04.12.2020, the applicant is evading the process of investigation. In such circumstances, when police is seeking necessary relief for effective investigation from the Court and when there is no any direction and/or order to restrain them for further investigation, it cannot be said that, the action on the part of the police is prejudicial to the right of the applicant.

33. The next submission canvassed by the learned Senior Counsel for the applicant that, there is a specific provision for arrest made under Section 41 of the Cr.P.C., and therefore, no order can be passed under Section 73 of the Cr.P.C, for issuance of warrant. In the facts of the present case as discussed hereinabove, the Investigating Officer, has specifically appended a note that the warrant is essential for the further process to be undertaken under Section 82(1) of the Cr.P.C. In such circumstances, this Court is of the view that when applicant has not cooperated the investigation and still at run, the police has statutory right to obtain arrest warrant under Section 70 of the Code, so that, further proceedings under Section 82(1) may get written proclamation for accused who is absconding. In such circumstances, application of Section 41A would not attract.

34. The next contention raised was that the applicant is pursuing his legal remedy and he cannot termed as 'absconder' and as such there is no material to show that the applicant is absconding or is concealing himself. This Court is not in agreement with the contention, as since the lodging of the FIR, the applicant, who is accused of non-bailable offence and is evading his arrest. Record indicates

that he was aware about issuance of the warrant and was not available at his residential address. His anticipatory bail application is also rejected by the Sessions Court. In such circumstances, while passing the order under Section 82(1) of the Cr.P.C, the court below has recorded that the applicant left his residential house and is avoiding the services and he has knowledge that his presence is necessary investigation. Thus, therefore, merely filing of anticipatory bail would not appearance of the absconding accused.

35. In the aforementioned reasons, as discussed hereinabove, having considered the respective submissions and having gone through the facts and circumstances of the case, the court below was justified in issuing the arrest of warrant under Section 70 and passing the order under Section 82(1) of the Cr.P.C, and therefore, this Court does not find any infirmity in the impugned orders passed by the courts below, which does not call for any interference, as a result, no any exceptional circumstances exists to exercise discretionary powers under Article 226 of the Constitution of India to interfere with the impugned orders passed by the courts below. Accordingly, petition fails and is hereby dismissed.

Order in Criminal Misc. Application (for Interim Relief) No.1 of 2022:

In view of the order passed in main matter being Special Criminal Application No. 8272 of 2021, no order in present application and is disposed of accordingly.