

(2018) 07 DEL CK 0156
In the Delhi High Court
Case No : W.P.(CRL) 1732 OF 2018

Poonam Tiwari @APPELLANT@Hash State (Nct Of Delhi)

Date of Decision : 06-07-2018

Acts Referred:

Code of Criminal Procedure 1973 — Section 82, 82(4)
Indian Penal Code 1860 — Section 34, 304B, 498A

Citation : (2018) 07 DEL CK 0156

Hon'ble Judges : MUKTA GUPTA, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

MUKTA GUPTA, J

Crl.M.A. No. 10697/2018 (Exemption)

Allowed, subject to all just exceptions.

W.P.(CRL) 1732/2018

1. By this petition, the petitioner prays as under:-

I. Issue a writ in the nature of Mandamus or any other appropriate Writ(s) or Direction(s) or Order(s) of similar nature thereby issuing guidelines that

proceeding under Section 82 Cr.p.c. can not be initiated other than sections mentioned in Section 82 Sub-Section(4) of Cr.p.c.

II. Pass a direction to the Commissioner of Delhi Police to issue direction/guideline to Delhi police to follow the provisions laid down by the Law.

III. Action should be taken against the police officer who had manipulated the investigation and who had misguided and given false and wrong

Statement/Status Report before the Honâ??ble High Court and Ld. Trial Court.

IV. Release the petitioner/co-accused as she had been illegally taken into custody and in judicial Custody since 42 days without following the due

process of Law.

2. The grievance of the petitioner in nutshell from the contents of the petition as stated is that though FIR No. 261/2016 under Sections 498A/304B/34

IPC was registered on 24th April, 2016 and her son Chandan Tiwari was arrested on the same day, the petitioner was never summoned as an

accused. Even in the chargesheet filed against the petitioner's son on 22nd July, 2016 the petitioner was not kept in column No. 11 nor any legal

proceedings initiated against her on record. Even in the committal order there was no mention of the petitioner. Charge against the main accused was

framed on 27th August, 2016 mentioning that co-accused Poonam Tiwari was absconding but again the petitioner did not know her status. It is further

stated that the son of the petitioner filed a bail application before this Court which came up for hearing on 31st October, 2017 wherein it was

mentioned that co-accused, Poonam Tiwari, was still absconding and the process under Section 82 Cr.P.C. has been initiated against her and the

consequent proceedings for declaring proclaimed offender is pending before the Trial Court.

3. Learned counsel for the petitioner contends that on the Court record there were no proceedings pending actually and the petitioner was illegally

declared a proclaimed offender. A perusal of the paper book filed by the petitioner and the status report reveals that since the petitioner was not

available and was absconding proceedings under Section 82 Cr.P.C. were initiated against the petitioner. It is nowhere stated that the petitioner was

declared a proclaimed offender under Section 82 Cr.P.C.

4. It is well settled that for declaring a proclaimed offender under Section 82 Cr.P.C. police has to first justify that despite the efforts to arrest, the

person is evading the arrest. In this regard non-bailable warrants were issued by the learned Metropolitan Magistrate which were sought to be

executed, on which reports were submitted. Before the petitioner could be declared proclaimed offender under Section 82 Cr.P.C. the petitioner filed

an application seeking anticipatory bail before the learned Additional Sessions Judge wherein the trial against her son was going. In the application for

anticipatory bail vide order dated 16th January, 2018 the learned Additional Sessions Judge directed that In this matter the trial is already going on in

this Court and the said matter is now listed for 16th February, 2018, so bail

matter is also fixed for the same date, till then no coercive steps shall be taken by Investigating Officer against applicant/accused.Â

5. Since an interim protection was granted to the petitioner by the learned Additional Sessions Judge vide order dated 16th January, 2018 the petitioner was made to join the investigation and a chargesheet qua her without arresting her was filed as is evident from the document of the Investigating Officer dated 9th February, 2018 annexed as Annexure-K at page 109 of the paper book. Since the learned Additional Sessions Judge had granted interim protection to the petitioner, the learned Metropolitan Magistrate on 19th March, 2018 dropped proceedings under Section 82 Cr.P.C. as the petitioner had already joined the investigation. On 10th April, 2018 the learned Additional Sessions Judge dismissed the anticipatory bail application of the petitioner whereafter she surrendered and was sent to judicial custody.

6. Contention of learned counsel for the petitioner that since chargesheet was filed without arrest, there was no justification in keeping her in custody deserves to be rejected for the reason the chargesheet was filed when there was an interim protection in favour of the petitioner and even if the police officer required the custodial interrogation he could not have resorted to the same.Â

7. Further the contention of learned counsel for the petitioner that proceedings in two courts could not have gone though simultaneously also deserves to be rejected for the reason the learned Metropolitan Magistrate is the Court of original jurisdiction where the chargesheet is required to be filed whereafter committal is done to the Court of learned Additional Sessions Judge and since no chargesheet was filed against the petitionerÂ and no investigation could be carried out against her for want of joining the investigation, non-bailable warrants were required to be got issued from the Court

of Learned Metropolitan Magistrate. Thus non-bailable warrants were sought from the learned Metropolitan Magistrate by the police officer in accordance with law on an application seeking process under Section 82 Cr.P.C. which were dropped on 19th March, 2018 as the petitioner had joined the investigation. The second proceedings were on the anticipatory bail application filed by the petitioner before the learned Additional Sessions Judge which was decided independently and dismissed on 10th April, 2018. The

two proceedings cannot be clubbed together.

The petitioner is in custody since the date of surrender i.e. 10th April, 2018 and as noted the procedure adopted by the investigating agency is in

accordance with law, thus, no case is made out for issuing any guidelines or holding that any misguided or wrong statement/status report was filed

before this Court or that the custody of the petitioner is illegal.

8. Petition is dismissed.