



ORDER BELOW APPLICATION (EXHIBIT 28)
IN SPECIAL CASE MCOCA NO. 1/2023
(STATE VS. PRATIK & OTHS.)
(PASSED ON : 30/03/2024)

1. The prosecution has filed this application to issue a proclamation against the accused No. 3-Vikrant Dasharath Mane (for short 'accused'), R/o. Koli Galli, Juni Peth, Pandharpur, Taluka : Pandharpur, District : Solapur, who according to the prosecution is willfully absconding.
2. Gone through the application.
3. Heard Shri. Wangikar, Additional Public Prosecutor (for short 'A.P.P.') for the prosecution.
4. The accused is charged under Sections 3(1)(ii), 3(2), 3(4) of the MCOC Act and Sections 307, 323, 506, 143, 147, 148 read with 149 of the Indian Penal Code (for short 'I.P.C.'). The case is pending due to absence of the accused.
5. The non bailable warrant was issued against the accused on 02/09/2023 and thereafter, standing warrant was also issued on 02/10/2023 under Section 70 of the Code of Criminal Procedure (for short 'Cr.P.C.') but inspite of several attempts made by the police machinery they could not find the accused. The application make it crystal clear that it is not possible to trace the accused's exact place of abode and address.
6. It is well settled principle in law that processes under Sections 82 and 83 of the Cr.P.C. cannot be issued unless it is

established that a warrant had already been issued against the person wanted and that person was absconding. The previous issue of a warrant against the person whose attendance is required before the Court is a necessary condition. Simultaneous issue of both the processes, namely, warrant of arrest and proclamation, is ex-facie contradictory, since it is only after the first that the second can be issued where the concerned person is reported as willfully absconding or is hiding. After issue of the non bailable warrant against the accused person the Court should wait until the execution report of the warrant is received. After receiving the execution report the Court must be satisfied that the accused was absconding or concealing himself for the purpose of avoiding the service of the warrant. The mere fact that the Police Machinery could not find the accused is not enough to issue proclamation under Section 82 of the Cr.P.C. against the accused.

7. Therefore, in view of the facts and circumstances of the case I am satisfied that the accused is willfully absconding or concealing himself for the purpose of avoiding the service of the warrant. The fact that the warrant of arrest could not be served is enough to believe that the accused has absconded and concealing himself so that the warrant cannot be executed and to issue proclamation under Section 82 of the Cr.P.C. against the accused. The requirements as laid down under Section 82 of the Cr.P.C. are complied by the prosecution before filing this application. Hence, I am inclined to grant this application.

8. In the result, the order.

ORDER.

1.	The application (Exhibit 28) is granted.
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2.	The written proclamation be published as contemplated under Section 82(1) and 82(2)(i)(a, b, c) of the Code of Criminal Procedure requiring the accused No. 3-Vikrant Dasharath Mane (for short 'accused'), R/o. Koli Galli, Juni Peth, Pandharpur, Taluka : Pandharpur, District : Solapur to appear before this Court to answer the said complaint.
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Date : 30/03/2024.

(M.B.Lambe)
Special Judge (MCOCA),
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe,
District Judge – 1 &
Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 30/03/2024
- (d) Order uploaded on : 02/04/2024