

Order No.36
24-09-2024

Today is fixed for appearance of accused Pintu Sk, Nayan Konai, Manasa Konai, Talur Sk, Jamaluddin Molla, Dalal Sk, Monirul Sk and Rafikul Sk and E.R of W.A against accused Arif Khan as well as explanation and personal appearance of the Warrant officer of Murarai P.S, regarding non execution of the W.A issued against accused Arif Khan, if any.

Five accused persons namely ; Pintu Sk, Nayan Konai, Manasa Konai, Talur Sk, Jamaluddin Molla on court bail are present and file hazira.

Three other accused persons namely ; Dalal Sk, Monirul Sk and Rafikul Sk also on Court bail, are absent without steps.

No E.R of W.A has been received in respect of accused Arif Khan. The warrant officer Murarai P.S is personally present before the court with an explanation, submitted in compliance with order dated 01-08-2024.

Perused the same as well as other materials on record. Heard the warrant officer of Murarai P.S ASI Sanaur Hossain, in person. It is manifest from the report submitted by the warrant officer Murarai P.S as well as his submission before the court that he has made endeavor to apprehend absconding accused Arif Khan, son of Najir Khan of Rajgaram, P.S Murarai, Dist. Birbhum, but he has not been able to apprehend the absconding accused, apparently since he is no longer residing in the said village for the last three years. In this regard a certificate issued by the Pradhan Rajgram Gram Panchayet is also annexed. The Warrant Officer also submits a prayer for issuance of proclamation against the absconding accused Arif Khan in terms of Section 84 of the BNSS. The explanation submitted in compliance with order dated 01-08-2024 and the prayer for issuance of proclamation against accused Arif Khan have both been forwarded by the Officer in-charge Murarai P.S.

Evidently, the concerned P.S finally put in some effort, in order to apprehend the absconding accused Arif Khan, or so it appears from the plethora of G.D entries in between 11-07-2024 and 22-09-2024, purportedly registered in connection with the search of accused Arif Khan.

Having said that, this court is mindful of the fact that the instant Sessions Case arose from Murarai P.S case No. 221 of 2019 dated 16-12-2019 under Section 399/402 of IPC, on the basis of a suo-moto complaint submitted by ASI Abul Barkat Miya of Murarai P.S itself. It is also not the contention of the warrant officer, Murarai P.S that there has been no previous case registered against accused Arif Khan, or for that matter, the other accused persons in respect of whom, charge sheet has been submitted, for similar offences.

The warrant of arrest against accused Arif Khan is pending since 29-04-2023, i.e since the last year and half, but the more pertinent question is whether the court should be taken for a ride in believing that the concerned police station are unaware of the whereabouts of accused person, with not so great antecedents and in respect of whom multiple other cases have previously been registered in the same P.S. It is not a matter of co-incidence that bulk of the warrants of arrest pending before the courts is in respect of cases registered on the basis of suo-moto complaints. If the courts cannot rely upon the Police personnel to bring such persons, against whom several cases have suo-moto been registered by the P.S itself, under arrest, one wonders, what it has to do, in order to proceed with consideration of charge, in a case that was originally registered five years ago. Be that as it may, this court is still inclined to trust the police personnel that they would be able to execute the warrants of arrest pending against them, including that of accused Arif Khan. In such circumstances, the prayer for issuance of proclamation against accused Arif Khan is kept with the record and will be taken up for consideration on the next date.

I find it pertinent to mention herein that the warrant officer has prayed for issuance of proclamation under Section 84 of the BNSS and not under Section 82 of the Cr.P.C. The instant case was registered in December 2019, well before the instant case was registered. Consequently, proclamation, if any, would have to be issued under Section 82 of the Cr.P.C and not under Section 84 of the BNSS. However, the law is apposite that it is the substance and not the form of an application, that should be taken into consideration. Since it is evident that the warrant officer intended the application to be want for issuance of proclamation, misquoting of the Section would not be a bar to pass appropriate order on the basis of its substance.

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Accordingly, let the prayer for issuance of proclamation be kept with the record and a final opportunity be given to the concerned P.S to cause execution of the warrant of arrest against accused Arif Khan.

I find it relevant to mention herein that three accused persons namely; Dalal Sk, Monirul Sk and Rafikul Sk, being on court bail are absent without steps. None appears on their behalf, in spite of repeated call. Thus, this court is constrained to issue warrant of arrest against accused Dalal Sk, Monirul Sk and Rafikul Sk as well. As stated in my foregoing discussion, this court has reason to believe that this is not the only case registered by Murarai P.S against the aforementioned three persons either, therefore, this court trust Murarai P.S and its officials to apprehend the three other absconding accused persons namely; Dalal Sk, Monirul Sk and Rafikul Sk as well and produce them before the court, positively by the date fixed.

Since the warrant officer Murarai P.S is present before the court, let the warrant of arrest as against accused Dalal Sk, Monirul Sk and Rafikul Sk be handed over to him in this court itself, so that there is no delay in causing search and apprehension of the accused persons.

Let a copy of this order be sent to the S.D.P.O, Rampurhat, who happens to be the Nodal officer for execution of warrants within the jurisdiction of Rampurhat.

Let a copy of this order also be sent to the O/C Murarai P.S for strict compliance.

Fix 23-11-2024 for appearance of accused Pintu Sk, Nayan Konai, Manasa Konai, Talur Sk, Jamaluddin Molla.

To date for E.R of W.A against accused Arif Khan, Dalal Sk, Monirul Sk and Rafikul Sk.

(Dictated & Corrected by me)

Sd/- S.R.Chowdhury
Additional Sessions Judge,
Rampurhat, Birbhum
J.O Code no. WB00885.

Sd/- S.R.Chowdhury
Additional Sessions Judge,
Rampurhat, Birbhum
J.O Code no. WB00885.

Memo No.

Dated:

Copy forwarded to :

1. The SDPO, Rampurhat Sub-Division.
2. The O/C Murarai P.S for information and taking necessary action.

Additional Sessions Judge,
Rampurhat, Birbhum
J.O Code no. WB00885.