

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 1265 of 2026

Kaushalya Devi, w/o Lakshman Yadav aged about 39 years Resident of
Village-Padriya, P.O. & P.S. Devipur, Dist-Deoghar. ... **Petitioner**
versus

The State of Jharkhand ... **Opp. Party**

For the Petitioner : Mr. Lakhan Chandra Roy, Advocate
For the State : Mrs. Kumari Rashmi, Addl. P.P.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with the prayer to quash the orders dated 06.09.2018 and 12.06.2019 whereby and where under respectively a non-bailable warrant of arrest and the proclamation under Section 82 Cr.P.C. have been issued by the learned J.M. 1st Class Deoghar in connection with Devipur P.S. Case No. 12 of 2015 corresponding to G.R. Case No. 276 of 2015 without recording any satisfaction that the petitioner is evading arrest by concealing or absconding.

3. Learned counsel for the petitioner submits that learned Judicial Magistrate, Deoghar has committed a grave error while issuing the non-bailable warrant of arrest against the petitioner without recording the satisfaction that the petitioner absconded and concealed himself to evade his arrest which is a *sine qua non* for issuing proclamation under Section 82 of Cr.P.C. that too without fixing any time and place for appearance for the accused persons of the case in respect of whom the proclamation under section 82 of Cr.P.C. was issued. It is submitted by the learned counsel for the petitioner that the impugned order is not sustainable in law. Hence, it is submitted that the orders dated 06.09.2018 and 12.06.2019 passed by the learned J.M. 1st Class Deoghar in Devipur P.S. Case No. 12 of 2015 corresponding to G.R. Case No. 276 of 2015; being not in

accordance with law, be quashed and set aside and the prayer made in the Cr.M.P. be allowed

4. Learned Addl. P.P. appearing for the State vehemently opposes the prayer for quashing the orders dated 06.09.2018 and 12.06.2019 passed by the learned J.M. 1st Class Deoghar in Devipur P.S. Case No. 12 of 2015 corresponding to G.R. Case No. 276 of 2015 and submits that the very fact that the learned J.M. 1st Class, Deoghar has issued non-bailable warrant of arrest and the proclamation under Section 82 of Cr.P.C. itself shows that there were materials available in the record for the learned J.M. 1st Class Deoghar to be satisfied that the petitioner by absconding or concealing himself to evade his arrest. Hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

5. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that section 73 Cr.P.C. empowers, inter alia, the J.M. 1st Class to direct a warrant to any person, inter alia, accused of a non-bailable offence and he is evading his arrest. Now coming to the facts of the case as the petitioner is accused of having committed the punishable offence under section 302 IPC so no doubt he is accused of committing a nonbailable offence but, there is absolutely no material on the record to suggest that the petitioner was evading his arrest nor the learned Magistrate has recorded any satisfaction in this respect in the impugned order.

6. Under such circumstances the learned J.M. 1st Class, Deoghat still having issued the non-bailable warrant of arrest, in the considered opinion of the case the same is not sustainable in law, therefore, the order dated 06.09.2018 passed by the learned J.M.1st Class, Deoghar in Devipur P.S. Case No. 12 of 2019 corresponding to G.R., Case No. 276 of 2020 is quashed and set aside.

7. So far as the order dated 12.06.2019 is concerned, it is a settled principle of law that the court which issues the proclamation under Section 82 of Cr.P.C. must record its satisfaction that the accused in respect of whom the proclamation under Section 82 of Cr.P.C. is made,

is absconding or concealing himself to evade his arrest and in case the court decides to issue proclamation under Section 82 of Cr.P.C., it must mention the time and place for appearance of the petitioner in the order itself by which the proclamation under Section 82 of Cr.P.C. is issued. As already indicated above since the learned J.M. 1st Class, Deoghar has neither recorded its satisfaction that the petitioner is absconding or concealing himself to evade his arrest nor fixed any time or place for appearance of the petitioner, this Court has no hesitation in holding that the learned J.M. 1st Class, Deoghar has committed a grave illegality by issuing the said proclamation under Section 82 of Cr.P.C. without complying the mandatory requirements of law. Hence, the same is not sustainable in law and the continuation of the same will amount to abuse of process of law. Therefore, this is a fit case where the order dated 12.06.2019 be quashed and set aside.

8. Accordingly, the order dated 12.06.2019 passed by the learned J.M.1st class Deoghar in Devipur P.S. Case No. 12 of 2019 corresponding to G.R. Case No. 276 of 2020, be quashed and set aside qua the petitioner.

9. Accordingly, the order dated 12.06.2019 passed by the learned J.M.1st class Deoghar in Devipur P.S. Case No. 12 of 2019 corresponding to G.R. Case No. 276 of 2020, is quashed and set aside qua the petitioner.

10. The learned J.M.1st class Deoghar may pass a fresh order in accordance with law.

11. In the result, this Cr.M.P. stands allowed.