

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1520 of 2025

Dharmendra Chaudhary, age-33 years, s/o Kamla Choudhary, r/o
Village-Mobarakapur, P.O.-Pipariya, P.S.-Mohania, Dist.-Kaimur
(Bhabua), Bihar

.... Petitioner

Versus

The State of Jharkhand

.... Opp. Party

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

.....

For the Petitioners	: Mr. Rahul Pandey, Advocate
For the State	: Mr. Bishambhar Shastri, Addl. P.P.

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By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 528 of B.N.S.S., 2023 with a prayer to quash the order dated 11.10.2023 passed by the learned Additional Sessions Judge-II, Hazaribagh in Sessions Trial No. 334 of 2021 by which *inter alia* the non-bailable warrant of arrest has been issued against the petitioner for non-appearing in the trial even though he was released on bail upon furnishing bail bond along with undertaking, to appear before the court concerned on the date fixed and also to quash the order dated 18.11.2024 passed by the learned Additional Sessions Judge-VI, Hazaribagh in Sessions Trial No. 299

of 2024 by which the proclamation under Section 82 Cr.P.C. has been issued.

3. It is submitted by the learned counsel for the petitioner that the learned Additional Sessions Judge-II, Hazaribagh has committed error because the learned Additional Sessions Judge-II, Hazaribagh directly cancelled the bail bond of the petitioner instead of canceling the bail granted to the petitioner and also submitted that the order dated 18.11.2024 is not sustainable in law, as without recording the satisfaction that the petitioner is absconding or concealing himself to evade his arrest and without fixing any time or place for the appearance of the petitioner who is the accused person of the case has issued the proclamation under Section 82 of Cr.P.C. Hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.
4. Learned Additional Public Prosecutor on the other hand opposes the prayer and submits that so far as the order dated 11.10.2023 is concerned, there is absolutely no illegality in the said order because it is crystal clear from the order itself that, though the petitioner was on bail but in-spite of the direction of the court to appear in the court concerned, the petitioner was neither taking any steps to be represented through his lawyer nor appearing himself personally. So as the petitioner who is undisputedly the accused person of the case, has violated the terms of the bail bond submitted by him to be released on bail, wherein he undertook to appear before the trial court, hence, the learned Additional Sessions Judge-II, Hazaribagh has rightly cancelled the bail granted to him but in-stead of mentioning that he has cancelled the bail granted to him he has

mentioned that he is cancelling the bail bond furnished. The consequence is that some advantage might have accrued to the bailers but certainly, the petitioner cannot claim to be aggrieved by such order. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

5. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that an accused of a criminal case, who is released on bail, has no choice for not appearing before the court which grants him bail, as per his sweet will, without the permission of the court. When an accused is produced before the court in a criminal case, involving non-bailable offences, the accused is first remanded to judicial custody by the court. After such a remand to judicial custody, the accused may pray for being released on bail and if the court which remands the accused to judicial custody; or any other court empowered under section 437 or 439 of the Code of Criminal Procedure or the corresponding provisions of B.N.S.S. is satisfied that the accused will remain present in the court, in which his case is pending, and other attending considerations; on the prayer of the accused, may release the accused on bail. After an accused is granted bail as such; by the order of the court, the accused furnishes a bail bond and in the bail bond the accused undertakes that he will appear before the court on each of the dates to which the case would be fixed in future. So, ordinarily the accused is expected to remain present in court on each of the dates to which the case is fixed, if he is on bail. Of course, there is provision *inter alia* in Section 317 of the Cr.P.C. and the corresponding provision of B.N.S.S.; where the court

can dispense with the personal attendance of the accused and proceed with such enquiry or trial in absence of the accused, if he is represented by his pleader. But when the accused who is on bail is directed specifically to remain present on a particular day by the court, then the accused has to appear in the court because; otherwise if the accused is unable to present himself before the court by his own personal arrangement; when the date of the case is fixed; he has the choice to remain in judicial custody and face the trial and when the accused remains in custody, to ensure his production before the trial court, will be the responsibility of the court concerned; by passing appropriate orders and giving necessary direction to the agencies concerned.

6. Now coming to the facts of the case, it is evident from the order dated 11.10.2023, that the petitioner is not cooperating with the trial of the case and has remained absent on several dates and has neither made any prayer to be represented by his lawyer nor personally coming to court. A criminal trial cannot take place in the absence of the accused person. It is common knowledge that an accused person of the case, if he knows that his conviction is imminent because the witnesses will support the case of prosecution; resorts to all kinds of tactics to delay the trial and to harass the witnesses by making them to come to the court again and again for recording of their evidence.
7. Under such circumstances, when the petitioner in-spite of the direction of the court, though he was on bail, did not appear before the trial court nor made any prayer to be represented through his lawyer, this Court do not find any illegality in the order dated 11.10.2023 passed by the learned trial court being the learned

Additional Sessions Judge-II, Hazaribagh in cancelling the bail granted to the petitioner and directing issuance of non-bailable warrant of arrest.

8. So far as the contention of the petitioner that in-spite of cancelling bail, the learned Additional Sessions Judge-II, Hazaribagh has mentioned that the bail bond has been cancelled is concerned, by such cancellation of bail bond some advantage might have accrued to the bailer is concerned, but it will have no bearing upon the portion of the order by which non-bailable warrant of arrest has been issued against the petitioner.
9. Accordingly, this Court do not find any illegality in the order dated 11.10.2023 passed by the learned Additional Sessions Judge-II, Hazaribagh in Sessions Trial No. 334 of 2021.
10. So far as the order dated 18.11.2024 is concerned, by now 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 Additional Sessions Judge-VI, Hazaribagh has neither recorded its satisfaction that the petitioner is either absconding or concealing himself to evade his arrest nor fixed any time or place for appearance of the petitioner who is the accused person of this case, this Court has no hesitation in holding that the

learned Judicial Additional Sessions Judge-VI, Hazaribagh has committed gross illegality by issuing the said proclamation under Section 82 of Cr.P.C. without complying with 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 and this is a fit case where the order dated 18.11.2024 passed by the learned Additional Sessions Judge-VI, Hazaribagh in Sessions Trial No. 299 of 2024 be quashed and set aside.

11. Accordingly, the order dated 18.11.2024 passed by the learned Additional Sessions Judge-VI, Hazaribagh in Sessions Trial No. 299 of 2024, is quashed and set aside.
12. The learned Additional Sessions Judge-VI, Hazaribagh may pass a fresh order in accordance with law.
13. In the result, this criminal miscellaneous petition is allowed to the aforesaid extent only.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 7th July, 2025
AFR/Sonu-Gunjan/-