

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1990 of 2021

Abhay Kumar Mishra

... **Petitioner**

-Versus-

1. The State of Jharkhand through Director General of Police, Jharkhand
2. Deputy Inspector General of Police, South Chotanagpur Range, Doranda
3. S.S.P. Ranchi,

... **Opposite Parties**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	: Mr. Ajit Kumar, Sr. Advocate Mr. Krishna Prajapati, Advocate
For the Opposite Party-State	: Mr. Kaushik Sarkhel, G.A.-V
For the Informant	: Mr. Mahesh Tewari, In person

02/15.09.2021. This criminal miscellaneous petition has been taken through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic.

2. Learned counsel for the petitioner undertakes to remove surviving defects before the next date of listing.
3. Learned counsel for the petitioner is directed to array informant as opposite party no.4 in this petition.
4. Learned counsel for the petitioner will serve a copy of the petition along with affidavits upon Mr. Mahesh Tewari within a week.
5. However, Mr. Tewari submits that he will take copy of the petition by way of applying before this Court.
6. The petitioner and the informant are practicing Advocates of this Court. When this matter was taken up, at the outset Mr. Mahesh Tewari appearing in person submitted that this matter may kindly be taken up after two weeks to enable him to file response.

7. The Court was inclined to adjourn the matter for two weeks. However, the prayer for interim relief, as prayed by the petitioner, was objected by Mr. Mahesh Tewari and that is why this matter was heard on the point of interim relief as prayed in I.A. No.4808 of 2021.

8. Mr. Ajit Kumar, learned Senior counsel appearing for the petitioner and Mr. Mahesh Tewari, appearing in person have addressed the Court on merits of the case and Mr. Tewari has vehemently opposed the prayer of interim relief.

9. Mr. Ajit Kumar, learned Senior counsel appearing for the petitioner draws attention of the Court to paragraph 62 onwards of the petition and submits that similar allegation has been considered by the Income Tax Department, District Education Officer and other officials as disclosed in those paragraphs and moot case has been filed. He further submits that the charge-sheet has not been submitted as yet in spite of the order dated 24.08.2021 whereby non-bailable warrant of arrest has been directed to be issued against the accused persons including the petitioner. He also submits that Section 170 of the Cr.P.C. has been recently considered by the Hon'ble Supreme Court in the case of ***Siddharth v. The State of Uttar Pradesh & another*** in ***Criminal Appeal No.838 of 2021*** and the Hon'ble Supreme Court in that case has held that once the person is cooperating in the investigation merely on the ground of submitting charge-sheet, there is no need of arresting the person. He further submits that the said aspect of the matter was again considered by the Hon'ble Supreme Court in the case of ***Aman Preet Singh v. C.B.I. through Director*** in ***Criminal Appeal No.929 of 2021***.

10. Mr. Kaushik Sarkhel, learned counsel for the State submits that so far as the order dated 24.08.2021 is concerned, that is not passed in view of the parameters laid down by the Hon'ble Supreme Court in the aforesaid two judgments relied by the learned Senior counsel for the petitioner. He further submits that this aspect of the matter has also been considered by the Hon'ble Supreme Court in the case of ***State through C.B.I. v. Dawood Ibrahim Kaskar & others***, reported in ***AIR 1997 SC 2494***.

11. Mr. Mahesh Tewari, appearing in person draws attention of the Court to several paragraphs of the petition and submits that there is direct allegation against the petitioner of embezzlement of sum of Rs.2 Crores and above and the investigation is pending since 2017. The informant has earlier approached this Court in W.P. (Cr.) No.429 of 2018 and the case was disposed of on the submission of Deputy Superintendent of Police, Hatia about completion of investigation within two months. He further submits that the allegation is there and that is why the impugned order of non-bailable warrant of arrest has been directed to be issued against the petitioner. He also submits that in this petition, only F.I.R. is under challenge and remedy is available with the petitioner to challenge so far as the order dated 24.08.2021 is concerned.

12. In light of the above facts, learned counsel for the opposite party-State and the informant in person are directed to file counter affidavit.

13. On perusal of the impugned order dated 24.08.2021, it transpires that on the application of I.O., the learned court below has directed to issue non-bailable warrant of arrest. It is an admitted position that charge-sheet has not been submitted as yet and this aspect of the matter has been considered by the Hon'ble Supreme Court in the case of Siddharth (*supra*).

So far as personal liberty is concerned, it has been held by the Hon'ble Supreme Court in the case of Siddharth (supra) which is quoted herein below:

"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

14. The petitioner is a practicing Advocate of this Court and he will not flee. The petitioner is cooperating in the investigation, as has been submitted by the learned Senior counsel for the petitioner. Articles 21, 32 and 226 of the Constitution of India has been considered by the Hon'ble Supreme Court in the case of ***Arnab Manoranjan Goswami v. State of Maharashtra & Others***, reported in ***2021 2 SCC 427***. It has been held in paragraph 70 of the said judgment that basic rule of our criminal justice is bail, not jail. It has also been held that the High Courts and Courts in the district judiciary of India must enforce this principle in practice, and not forego that duty.

15. In view of the above facts, till the next date, the petitioner shall not be arrested in connection with Jagarnathpur P.S. Case No. 314/2017, corresponding to G.R. Case No.4984/2017, pending in the court of learned Judicial Magistrate, Ranchi, so far as the petitioner is concerned.

16. Mr. Ajit Kumar, learned Senior counsel appearing for the petitioner on instruction submits that the petitioner undertakes to co-operate with the Investigating Officer.

17. Post this matter on 04.10.2021.

18. Let this matter be tagged with W.P.(Cr.) No.358 of 2019 and W.P.(Cr.) No. 268 of 2021.

(Sanjay Kumar Dwivedi, J.)

Ajay/