



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 4040/2023

Banwari Lal

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s) : Mr. Ashok Kumar Choudhary
For Respondent(s) : Mr. Vikram Sharma, PP

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Order

24/07/2023

The present misc. petition under Section 482 Cr.P.C. has been filed by the petitioner against the order dated 04.05.2023 passed by the learned Magistrate, Nohar, District Hanumangarh by which the learned Magistrate took cognizance against the petitioner for offence under Section 467, 409 in the alternative Section 420 & 120B IPC and issued warrant of arrest against the petitioner.

Counsel for the petitioner submits that the police after thorough investigation had filed a negative FR that no case is made out against the petitioner. However, upon filing protest petition by the complainant, the learned Magistrate took cognizance of the offence and issued warrant of arrest. It is argued that the learned Magistrate has not applied his mind and there was no reason to discard or disbelieve the finding reached by the police. Moreover, when the petitioner applied for the



certified copy of the order dated 04.05.2023 alongwith statement of witnesses, copy of protest petition, statement under Section 161 Cr.P.C, the same was refused by the court below and a condition was put by the Judicial Magistrate to the effect that the accused may inspect and apply for certified copies only after he comes in the custody. Therefore, the petitioner could not file certified copy of the order dated 04.05.2023 alongwith the present petition and the misc. petition has been listed in the Defect category. It is therefore, prayed that the impugned order dated 23.05.2023 may kindly be quashed and set aside. It is further prayed that since the police had earlier filed FR in this case and the petitioner is ready to appear before the court below, therefore, the warrant of arrest issued by the Judicial Magistrate, Nohar vide order dated 04.05.2023 may kindly be converted into bailable warrant.

Learned Public Prosecutor opposed the prayer made by the petitioner, however, he concedes that the condition imposed by the Judicial Magistrate for issuance of certified copy of the order dated 04.05.2023 so also the statements and copy of protest petition, is not sustainable.

I have heard learned counsel for the parties and carefully gone through the material on record.

It is not disputed that after investigation, the police concluded that no offence as alleged were committed by the petitioner and a negative Final report came to be submitted before the learned Magistrate. Thereafter, upon filing protest petition, the learned Magistrate vide order dated 04.05.2023 took cognizance against the petitioner and issued warrant of arrest against the





petitioner, however, what is quite strange on the part of the Judicial Magistrate is that he not only refused to issue the copy of statement of witnesses, protest petition etc but even refused to issue the certified copy of the order dated 04.05.2023 with the observation after the accused comes in the custody of Court, he is free to apply for the certified copies of the documents in accordance with law. In the opinion of this Court, the condition imposed by the learned Magistrate is wholly absurd, illegal and in utter violation of principles of natural justice. Admittedly, the police has filed FR in this case and a failure to supply copies of relevant documents in this case would mean a virtual denial of prior knowledge of the evidence that is used against the accused. The prosecution cannot be permitted to take advantage of the investigation, statements etc and at the same time deny it to the accused.

Accordingly, the order dated 23.05.2023 is hereby quashed and set aside. The Judicial Magistrate, Nohar is directed to immediately issue the copy of documents as applied by the petitioner including the certified copy of the order dated 04.05.2023 and an explanation be furnished to this Court within a period of three weeks, as to why and under what legal provision, he denied issuance of certified copy of order dated 04.05.2023 and the copies of documents applied for by the accused petitioner.

So far as the impugned order dated 04.05.2023 is concerned, this Court is not inclined to interfere in the order of cognizance, however, since in this case, the police had earlier filed FR and thereafter, the court below has taken cognizance against



the petitioner but straightaway issued warrant of arrest, therefore, in the interest of justice, the warrant of arrest so issued against the petitioner is converted into bailable warrant of Rs. 30,000/-. The petitioner is directed to appear before the court below within a period of 15 days and submit the bail bonds. Upon furnishing bail bonds, the trial court is directed to release the petitioner on bail. However, if the petitioner fails to appear before the court below within the stipulated period, then arrest warrant may be issued against the petitioner.

With these observations, the misc. petition is disposed of. Stay petition also stands disposed of.

The misc petition be listed before this Court on 22.08.2023 alongwith explanation of the concerned Magistrate.

(MANOJ KUMAR GARG),J

129-BJSH/-

