

HIGH COURT OF MADHYA PRADESH : JABALPUR

(Division Bench)

M.Cr.C. No.43165/2018

Suresh Singh Bhadoria

-Versus-

Central Bureau of Investigation

Shri Siddharth Gupta, Advocate for the petitioner.
Shri J.K. Jain, Assistant Solicitor General for the respondent.

CORAM :

Hon'ble Shri Justice S.K. Seth, Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

<i>Whether approved for reporting ?</i>	Yes.
<i>Law laid down</i>	<p>1. In terms of Section 170(1) of CrPC, the investigating agency is mandated to produce an accused into custody for the non-bailable offence. The argument that the Court should have issued summons in respect of such offence, cannot be accepted.</p> <p>2. Inherent power of judicial review under Section 482 of CrPC presupposes that the Court is required to see whether the trial Court has abused the process of law or it is necessary to annul the proceedings for securing the ends of justice. The inherent powers ought to be exercised with due care, caution and circumspection and in the rarest of rare cases. Thus, inherent powers being discretionary in nature, cannot be exercised by overlooking conduct of an individual.</p>
<i>Significant paragraph Nos.</i>	14, 15 & 16.

ORDER
(Jabalpur, dtd.26.11.2018)

Per : Vijay Kumar Shukla, J.-

The petitioner has laid this miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 [for brevity “the CrPC”] to assail the impugned order dated 8-9-2018 passed in Special Case No.317/2014, whereby the application filed by the petitioner under Section 70(2) of the CrPC for recall of non-bailable warrant of arrest has been rejected. The petitioner has also prayed that a report from the Central Bureau of Investigation (CBI) may be called for to know the present status of the representation dated 7-02-2018 filed by the petitioner, whereby request was made before the Director, CBI for further investigation under Section 173(8) of the CrPC.

2. The facts of the case succinctly stated are, that in the year 2013 an FIR bearing Crime No.12/2013 was registered at the Police Station, S.T.F., Bhopal for the alleged irregularities committed by the M.P. Professional Examination Board, Bhopal [for short “the Vyapam”] in conducting various examinations including Pre-Medical Test (PMT) 2012 for admission of students in different Medical Colleges of Madhya Pradesh in M.B.B.S. Course from State quota.

3. After submission of charge-sheet in the year 2014 by the S.T.F. the matter was handed over to the CBI which gave rise to registration of FIR No.RC-2172015A0025 under sections 419, 420, 467, 468, 471 and 120-B of the Indian Penal Code [for short “the IPC”] read with sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and under Section 4 of the M.P. Recognized Examination Act, 1937.

4. It is stated that on 21-11-2017 the present petitioner received an undated notice from the CBI informing him as regards institution of the aforesaid case and that a charge-sheet will be filed before the Court of learned 15th Additional Sessions Judge, Bhopal on 23-11-2017. It is asserted that the present petitioner has been added as an accused for the first time in the said supplementary charge-sheet.

5. The learned Court below took cognizance of the alleged offences and issued non-bailable warrant of arrest against the petitioner, which is subject-matter of assail in the present petition.

6. Counsel appearing for the respondent raised an objection regarding maintainability of the present petition under

Section 482 of the CrPC invoking inherent jurisdiction of this Court stating, *inter alia*, that the petitioner is evading the process of law, as his application for grant of anticipatory bail has already been rejected by this Court; and that an application for Special Leave to Appeal preferred against the said order, has also been disposed of by the Apex Court by observing that the petitioner may move before the learned trial Court and seek regular bail. Therefore, considering the conduct of the petitioner, the present petition is liable to be dismissed

7. Counsel for the petitioner vehemently urged that the present petition is maintainable, as Chairman of Mayank Welfare Society, Indore petitioner has nothing to do with the admission of students in the Index Medical College, Hospital & Research Centre, Indore. There is absolutely no material in the supplementary charge-sheet to implicate him in the alleged offences. It is thus, asserted that there is no justification for issuance of a non-bailable warrant of arrest by the learned trial Court without taking into consideration entire gamut of facts and therefore, the same is illegal.

8. Having heard the learned counsel appearing for the parties, first it is apt to mention that the petitioner had earlier filed

an application for grant of pre-arrest bail under Section 438 of the CrPC comprising **M.Cr.C. No.2796/2018**, wherein similar arguments regarding no role of the petitioner in the present case were advanced before this Court, but the same were not accepted. The relevant portion of the order dated 25-01-2018 passed in M.Cr.C. No.2796/2018 is reproduced hereunder:

“Learned counsel for the petitioner submitted that there is no allegation against the petitioner in the report filed as he is not concerned with day-to-day affairs of the Medical College as he is the Chairman of the Society, therefore, order declining pre-arrest bail on 14-12-2017 is distinguishable as such petitioners were engaged in the admission process as Dean and the Chairman of the Admission Committee.

We find that such distinction does not entitle the petitioner for grant of pre-arrest bail. The petitioner as a Chairman of the Mayank Welfare Society is responsible for running the Medical College. As a person responsible for managing the affairs of the Medical College, the petitioner cannot take shelter behind the other functionaries of the Colleges. Therefore, in view of the reasons recorded in the order dated 14-12-2017 and later in the order dated 21-12-2017, we do not find any ground to grant pre-arrest bail to the petitioner.

Consequently, the present application for grant of pre-arrest bail under Section 438 of the Cr.P.C. is dismissed.”

9. Being aggrieved by the aforesaid order, the petitioner filed an application for Special Leave to Appeal (Crl.) No.4892/2018 before the Supreme Court. The said application was disposed by order dated 2-7-2018 in the following terms:

“Without expressing any opinion on the merits of the case, we leave it open to the petitioner to move the learned trial Court and seek regular bail. We make it clear that learned trial Court, as and when moved, will consider the said prayer in accordance with law and as expeditiously as the business of the learned trial Court would permit.

With the aforesaid observations the present special leave petition is disposed of.”

10. Undisputedly, the petitioner has not surrendered despite rejection of anticipatory bail by this Court as well as the order passed by the Supreme Court while disposing of the application for special leave to appeal. The supplementary charge-sheet has been filed on 23-11-2017 as per provisions of Section 173 of the CrPC. The Court has taken cognizance in the matter, for there being *prima facie* material against the accused persons. The trial Court in the impugned order has recorded the finding that due intimation was given to the present petitioner, however he opted not to appear before the Court, despite notice. Thereafter, non-bailable warrant of arrest was issued against the petitioner.

11. A contention has been raised that the trial Court should not have issued a non-bailable warrant of arrest against the petitioner, because he was not arrested during course of investigation either by the Special Task Force (STF) or by the CBI. It is further argued that there was no direction to appear before the

Court therefore, the Court should have issued summons for securing the presence of the petitioner rather than to issue a non-bailable warrant of arrest in the first instance itself.

12. The Division Bench in the case of **S.N. Vijaywargiya vs. Central Bureau of Investigation [M.Cr.C. No.26749/2017, decided on 21-12-2017]** after considering the provisions of sub-section (1) of Section 170 of the CrPC held that the trial Court was within its jurisdiction to take the accused into custody. The relevant para of the said judgement is reproduced hereunder:

“8. The police officer was bound to produce an accused in custody to the Court in terms of Sub-section (1) of Section 170 of the Code. The accused are charged for an offence under sections 467, 468 and 471 of the IPC. There is no assertion that the petitioner was granted pre-arrest bail during investigation. Therefore, there was mandate to the CBI to produce the accused for the non-bailable offences in custody alone. Since the CBI did not produce the accused in custody, the Court was within its jurisdiction to take the accused in custody. The petitioner was informed that the charge-sheet shall be filed before the Court of Special Judge on 23-11-2017. Therefore, it was incumbent for the petitioner to make himself available to the Court.”

13. Thus, the argument of the learned counsel for the petitioner that issuance of a non-bailable warrant of arrest against the petitioner is illegal, cannot be accepted. As per impugned order due notice was issued to the present petitioner and since he was

evading the process of law, the trial Court has rightly issued non-bailable warrant of arrest.

14. For exercising inherent power under Section 482 of the CrPC, an impugned order presupposes that this Court is required to see as to whether the trial Court has abused the process of law or otherwise, it is necessary to annul the same for securing the ends of justice. There is no dichotomy that inherent powers of the Court are wide in amplitude and can be resorted to, for passing appropriate orders in order to secure the ends of justice. The Court, clothed with wide powers, is also supposed to exercise such powers very sparingly to render real and substantial justice to the parties. Such inherent powers are to be exercised with due care, caution and circumspection and in the rarest of rare cases. The inherent powers being discretionary in nature, cannot be exercised by overlooking the conduct of an individual.

15. The petitioner. in the present case, despite rejection of anticipatory bail and the order passed by the Apex Court in the application for Special Leave to Appeal, giving him the liberty to move the trial Court for regular bail, has not been complied with *in stricto sensu* opting his non-surrender.

16. It is really a matter of serious concern that the petitioner remained out of reach of the CBI, despite being allegedly involved in grave and serious offences. Most importantly, since 2017 he is absconding. Due to absence of the petitioner, charge-sheet was filed against him before the competent Court of law *in absentia*, therefore, in our considered opinion, the sort of conduct of the petitioner is having direct ramification in the instant petition. Under the circumstance, we decline to exercise inherent jurisdiction under Section 482 of the CrPC.

17. In view of our preceding analysis, we find that no case is made out warranting interference of this Court under Section 482 of the CrPC.

18. *Ex-consequenti*, the petition deserves to and he is hereby dismissed.

(S.K. Seth)
Chief Justice

(Vijay Kumar Shukla)
Judge

ac.