

IN THE HIGH COURT OF JUDICATURE AT PATNA

Kriti Kamal

vs.

The State of Bihar and Ors.

Criminal Writ Jurisdiction Case No.108 of 2020

14 September 2023

(Hon’ble Mr. Justice Anil Kumar Sinha)

Issue for Consideration

Whether the NBW issued against the petitioner was illegal and contrary to **Section 73 CrPC**?

Whether further investigation against the petitioner was impermissible after filing of charge-sheet against FIR named accused?

Whether the petitioner could only be summoned under **Section 319 CrPC**?

Headnotes

**Criminal Procedure Code, 1973 – Section 73 – Non-bailable Warrant –** Where the offence alleged is cognizable and non-bailable and the accused is evading arrest, issuance of non-bailable warrant of arrest by the Magistrate/Special Judge is justified – Section 73 CrPC squarely applicable.

**Criminal Procedure Code, 1973 – Sections 41 & 73 – Arrest without Warrant –** Police is empowered under Section 41(1)(b) CrPC to arrest a person without warrant in case of credible suspicion of commission of a cognizable offence. Magistrate may also issue NBW under Section 73 CrPC when accused is absconding.

**Criminal Procedure Code, 1973 – Section 173(8) – Further Investigation –** Further investigation after filing of charge-sheet is permissible without prior permission of the Magistrate; police has statutory right to carry out further investigation – Distinguished from reinvestigation.

**Criminal Procedure Code, 1973 – Section 319 – Addition of Accused –** Section 319 CrPC not attracted where investigation itself reveals complicity of a non-FIR accused; such person can be proceeded against through further investigation and requisition for NBW.

**Bihar Prohibition & Excise Act, 2016 – Section 30(a) – Liability of Vehicle Owner –** If illicit liquor is seized from a vehicle, the registered owner of the vehicle is liable for prosecution under Section 30(a) of the Act; offence being cognizable and non-bailable.

**Practice & Procedure – Anticipatory Bail –** Dismissal of anticipatory bail application is a relevant factor in considering issuance of NBW against accused evading arrest in a non-bailable offence.

**Constitution of India – Article 226/227 – Writ Jurisdiction –** High Court will not interfere with NBW issued in accordance with law

where the accused is absconding and offence is cognizable and non-bailable – Writ petition dismissed.

Case Law cited

Cr.W.J.C. No. 1288 of 2010 (Priyanka Kumari and Another v. The State of Bihar and Other), (2009) 6 SCC 346, (2004) 5 SCC 347

List of Acts

The Code of Criminal Procedure, 1973, The Bihar Prohibition and Excise Act, 2016, The Constitution of India

List of Keywords

Illicit liquor transportation, Vehicle owner liability, Investigation vs. reinvestigation, Judicial discretion in issuing NBW

Case Arising From

Arising Out of PS. Case No.-20 Year-2019 Thana- SUIYA District- Banka

Appearances for Parties

For the Petitioner/s: Mr. Indu Bhushan

For the Respondent/s: Mr. Md. Nadim Seraj

Headnotes Prepared by Reporter: Mr. Ravi Raj, Advocate

Judgment/Order of the Hon’ble Patna High Court

The court held that NBW validly issued – Since offence under Section 30(a) Bihar Prohibition & Excise Act is cognizable and non-bailable, and petitioner was evading arrest, issuance of NBW was lawful.

Section 73 CrPC inapplicable – Petitioner fell within its ambit as a person accused of a non-bailable offence and evading arrest.

Further investigation permissible – Under Section 173(8) CrPC police can conduct further investigation even after filing charge-sheet; no requirement to reserve such right.

Section 319 CrPC not applicable – Since petitioner was already found accused during investigation and was evading arrest, not merely a case of adding new accused during trial.

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.108 of 2020**

Arising Out of PS. Case No.-20 Year-2019 Thana- SUIYA District- Banka

KRITI KAMAL W/o Gunjan Singh Resident of Village - Chhoti Dariyapur,  
Rampur, Ward no.7, Jamalpur, P.S.- Jamalpur, Dist.- Munger. ... Petitioner/s  
Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna. Bihar
2. The Superintendent of Police, Banka Bihar
3. The Dy. S.P., Banka. Bihar
4. The Inspector Of Police cum S.H.O., Suiya P.S., Dist.- Banka. Bihar
5. Sri Ram Nath Mandal, The Sub Inspector of Suiya P.S. cum investigating Officer. Dist.- Banka. Bihar

... ... Respondent/s

**Appearance :**

For the Petitioner/s : Mr.Indu Bhushan  
For the Respondent/s : Mr.Md. Nadim Seraj

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**  
**JUDGMENT AND ORDER**  
**ORAL**

**Date : 14-09-2023**

The present wit application has been filed for quashing the order, dated 17.01.2020, whereby on the requisition of the Investigating Officer, dated 05.01.2020, non-bailable warrant of arrest has been issued against the petitioner by learned Special Judge -cum- Additional Sessions Judge-II, Banka, in Special Excise Case No. 97 of 2019, arising out of Suiya Police Station Case No. 20 of 2019, registered for the offence punishable under Section 30 (a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as ‘the Act’).

2. The factual background of the case is that on 04.03.2019, a First Information Report was lodged bearing Suiya



Police Station Case No.20 of 2019, under Section 30 (a) of the Act, alleging therein that the accused persons coming from Deoghar were carrying 5 bottles of Royal Stag and 42 bottles of McDowell, having 750 ml. in each bottle, in a white-coloured Tiago car, having registration no. BR-10 Z-7556, with a signboard of Bihar Government at the front.

3. Two persons were arrested from the said car, namely, Jeeto Kumar and Bijay Kumar, who were made accused.

4. The fact that the petitioner is the registered owner of the car, in question, is not in dispute. The petitioner, having apprehension of her arrest in the present case, moved this Court by filing an application for grant of anticipatory bail, bearing Criminal Misc. No. 44448 of 2019 on 19.07.2019. After arriving at the conclusion that *prima facie* it appears that accusation have been made, which would constitute an offence under the Act as concerns the petitioner, the petitioner is the owner of the vehicle, from which the offending goods have been recovered, accordingly, the anticipatory bail application of the petitioner was dismissed.

5. After completion of investigation, the Police submitted charge sheet on 26.04.2019 against the accused persons named in the First Information Report. The learned Special Judge, vide order dated 07.05.2019, took cognizance under section 30 (a)



of the Act against accused Jeeto Kumar and Vijay Kumar. (**Annex-3**). Thereafter charges were framed and trial started.

6. On 05.01.2020, the Investigating Officer filed a requisition before the Special Judge, Banka, stating therein that during the course of investigation, the name of one Kriti Kamal, i.e. the petitioner, has come, who is the owner of the seized vehicle, bearing registration no. BR-10 Z-7556 and is absconding. Hence, the Investigating Officer prayed for issuance of warrant of arrest against the petitioner. On the said requisition, the learned Special Judge, Banka, by the impugned order, issued non-bailable warrant of arrest against the petitioner.

7. Learned Counsel for the petitioner submits that the issuance of non-bailable warrant of arrest, at the very outset, is violative of Section 73 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') inasmuch as the petitioner does not fall within any of the condition as enumerated in Section 73 of the Code.

8. In support of his argument, learned Counsel relied on a decision of Single Bench of this Court, passed in **Cr.W.J.C. 1288 of 2010 (Priyanka Kumari and Another v. The State of Bihar and Other)** and contends that the impugned order for issuance of warrant of arrest has been passed without applying the



judicial mind to the facts and circumstances of the case and also none of the necessary pre-conditions, as mentioned in Section 73 of the Code, is attracted.

**9.** Learned Counsel next submits that as per Section 41 of Code, the Police can arrest any person without any warrant, but the learned Special Judge, Banka, without issuance of summon to the petitioner, directly, on the requisition of the Investigating Officer, issued the non-bailable warrant of arrest, which is not justified in law.

**10.** Learned Counsel further submits that the petitioner was not named in the First Information Report and after completion of investigation, charge sheet was submitted only against the two accused persons, named in the First Information Report, and at the time of submission of the charge sheet, the Investigation Officer has not mentioned that the further investigation is continued.

**11.** On the other hand, learned Counsel for the State submits that the supervision note was submitted in course of investigation by the Police Inspector, Katoriya Circle, vide memo no. 428/19, dated 29.03.2019 in connection with Suiya Police Station Case No. 20 of 2019. The Police Inspector, Katoriya Circle, issued a correction slip, vide memo no. 473(A)2019, dated



06.04.2019, stating therein that in the supervision note, due to typing mistake, it could not be mentioned that the case is found true against the owner of the seized vehicle. Thus, assuming the case true under Section 30 (a) of the Act, the Investigating Officer was directed to submit requisition before the learned Court for adding the name of non-FIR accused, i.e. the petitioner, being the owner of the seized vehicle. Accordingly, the Police Inspector submitted progress report, vide memo no. 575/2019, dated 09.05.2019, stating therein that after supervision and correction in the supervision note, this case has been found true under Section 30 (a) of the Act against the owner of the seized vehicle, i.e. the petitioner and there is sufficient evidence to submit charge sheet against the petitioner. Accordingly, necessary direction was issued to the Investigating Officer to comply with the instruction of the supervising police authority. The Police Inspector again submitted progress report, vide memo no. 88/2020, dated 20.01.2020, stating therein that from perusal of the case diary, it appears that the Investigating Officer has obtained screen report as well as Adhar Card and owner book of the seized vehicle and found that Kriti Kamal, i.e. the petitioner, is the owner of the seized vehicle.

**12.** Learned Counsel further submits that the petitioner was found to be absconding from her house. As such, the



Investigating officer has obtained non-bailable warrant of arrest against the petitioner. Further, the Investigating Officer was directed to arrest the petitioner and in situation of absconding, taking action under Section 82/83 of the Code.

**13.** In reply, learned Counsel for the petitioner submits that in absence of any right having been reserved by the Investigation Officer for further investigation at the time of filing the charge sheet, no further investigation can be initiated against the petitioner, who is not named in the First Information Report and the only course available to summon the petitioner is under Section 319 of the Code.

**14.** I have heard learned Counsel for the parties concerned and have perused the materials available on record.

**15.** Section 30 (a) of the Act is cognizable and non-bailable offence. From perusal of the First Information Report, it appears that from the vehicle belonging to the petitioner, illicit liquor was being transported and the same was seized from the vehicle of the petitioner. As such, the First Information Report discloses a cognizable offence against the owner of the vehicle, as per Section 30 (a) of the Act.

**16.** From the requisition submitted by the Investigating Officer and from further investigation, it appears that the petitioner





was evading her arrest and it is not disputed that the petitioner, after apprehending her arrest in the present case, had approached this Court by filing anticipatory bail application, which was dismissed vide order, dated 19.07.2019.

**17.** Section 41 (1) (b) of the Code mandates that any police officer may without an order from a Magistrate and without a warrant, arrest any person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence.

**18.** Section 73 (1) of the Code says that the Chief Judicial Magistrate or a Magistrate of the first class may may issue a warrant for arrest of any person, who is accused of a non-bailable, offence and is evading arrest.

**19.** It is the specific case of the prosecution that the offence alleged in the First Information Report is non-bailable and the petitioner is evading her arrest. As such, Section 73 of the Code, relied upon by the petitioner, is not relevant in the facts of the present case. The decision of the Single Bench of this Court, in the case of **Priyanka Kumari** (supra), relied upon by learned Counsel for the petitioner is also not relevant.



**20.** Sub-clause (8) of Section 173 of the Code stipulates that nothing in the section shall be deemed to preclude any further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate.

**21.** In the case of **Rama Choudhary v. The State of Bihar**, reported in **(2009) 6 SCC 346**, the Supreme Court has held that the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Re-investigation without prior permission is prohibited. On the other hand, further investigation is permissible.

**22.** In paragraph 17 of **Rama Choudhary** (supra), the Supreme Court has held that the meaning of “further” is additional, more, or supplemental. “Further” investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or re-investigation to be started *ab initio* wiping out the earlier investigation altogether.

**23.** In the case of **Hasanbhai Valibhai Qureshi v. State of Gujarat and Others**, reported in **(2004) 5 SCC 347**, the Supreme Court has held that the hands of the investigating agency or the court should not be tied down on the ground that further



investigation may delay the trial, as the ultimate object is to arrive at the truth.

**24.** Further investigation even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognizance of any offence on the strength of a police report earlier submitted.

**25.** As per the language of Section 173 of the Code, the Police Officer can conduct further investigation suo motu also and the law does not mandate prior permission from the Magistrate for further investigation even after filing of the charge sheet.

**26.** Accordingly, the contention of the petitioner that at the time of filing of the charge sheet, no right was reserved by the Investigating Officer to conduct further investigation with regard to other accused is not supported by law.

**27.** In the present case, it is evident that illicit liquor was being transported in the vehicle, which, during the course of investigation, was found to be owned by the petitioner.

**28.** Section 30 (a) of the Act constitute an offence if the illicit liquor is transported from a vehicle and makes the owner of the vehicle liable under it, which is cognizable and not bailable.

**29.** During investigation, the supervising police authority found the case true against the owner of the seized



vehicle and directed the Investigating Officer to submit requisition before the learned Court for adding the name of non-FIR accused, i.e. the petitioner, being the owner of the seized vehicle.

**30.** Since the First Information Report discloses commission of cognizable offence, during investigation, the supervising police authority directed the Investigating Officer to arrest the petitioner and in situation of absconding, taking action under Section 82/83 of the Code. The I.O., in his requisition has stated that the petitioner is evading arrest. The offence is cognizable and non-bailable and anticipatory bail application of the petitioner has already been dismissed, as such, Section 319 of the Code is not attracted in the facts of the present case.

**31.** In view of the aforesaid discussion, I do not find any merit in this writ application.

**32.** This writ application is, accordingly, dismissed.

**33.** There shall be no order as to costs.

**(Anil Kumar Sinha, J.)**

Prabhakar Anand/-

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