

Calcutta High Court

HON'BLE JUDGE(S): **BIBEK CHAUDHURI , J**

SAMBHUNATH MONDAL V. STATE OF WEST BENGAL

C.R.R. - 11 of 2023, decided on 26/04/2023

Criminal P.C. (2 of 1974) , S.70— Issuance of arrest warrant - Offence of voluntarily causing hurt - Accused was aged about 90 years and had been enjoying privilege of exemption of his personal appearance - Warrant of arrest issued against accused recalled - Accused granted liberty to surrender before Trial Court within 14 days and in such cases they would be permitted to remain on bail.

(Para 4, 5)

Name of Advocates

Sabir Ahmed, Suman Biswas for Petitioner;

1. **ORDER:-**The petitioners have challenged an order dated 26th December, 2022 st passed by the learned Additional Chief Judicial Magistrate, 1st Court at Baruipur in connection with complaint case No.1471 of 2008 under Sections 323/34 of the IPC.

2.It is ascertained from the petition that trial of Complaint Case No.1471 of 2008 was concluded by the learned Magistrate. All the witnesses on behalf of the prosecution were examined and the accused persons were also examined under Section 313 of the Cr.P.C. The case was fixed for argument on 4th May, 2019. However due to COVID Pandemic argument could not be heard and on 3rd December, 2022, the prosecution advanced its argument.

3.At this stage, an application under Section 311 of the Cr.P.C was filed on behalf of the defence for examination of a Medical Officer. It is submitted on behalf of the petitioners that the petitioners filed the said application under Section 311 of the Cr.P.C only to assist the Court

to arrive at a just decision of the case. The learned Magistrate vide order dated 26th December, 2022 not only rejected the application under Section 311 of the Cr.P.C but was also pleased to issue warrant of arrest against all the petitioners including the petitioner No.1 who is aged about 90 years who had been enjoying privilege of exemption of his personal appearance under Section 205 of the Cr.P.C.

4. Having heard the learned Advocate for the petitioners and on careful perusal of materials on record, this Court is inclined to interfere with the impugned order dated 26th December, 2022 so far as it relates to issuance of warrant of arrest.

5. Warrant of arrest issued against the petitioner be recalled. The petitioners are at liberty to surrender before the Trial Court within 14 days from the date of this order. In such case, they are permitted to remain on bail. Proceeding under Section 446 against the sureties be withdrawn by the learned Magistrate.

6. So far as the order passed under Section 311 of the Cr.P.C, I do not find any reason to interfere with the said order.

7. Accordingly, the instant revision is allowed in part.

8. The parties are at liberty to act on the server copy of the order.

Petition Partly Allowed