

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 3783 OF 2025
SOURPYA DASGUPTA

VS
THE STATE OF WEST BENGAL & ORS.

For the Petitioner : **Mr. Phoroze Edulji, Ld. Sr. Adv.**
Ms. Priyanka Bhattacharya, Adv.
Ms. Banashree Mishra, Adv.

For the de facto
Complainant : **Mr. Sandipan Ganguly, Ld. Sr. Adv.**
Ms. Dipanjan Dutt, Adv.
Mr. Surajit Saha, Adv.

For the State : **Ms. Subhashree Patel, Adv.**
Ms. Kanchan Roy, Adv.

Last heard on : **22.09.2025**
Judgement on : **22.09.2025**

CHAITALI CHATTERJEE DAS, J. :-

1. Pursuant to the order dated 16.9.2025, permission was given to the petitioner to implead the de- facto complainant as Opposite Party no.2 in the Cause Title of this revisional application and a direction was given to the petitioner to handover the copy of revisional application on the Learned Advocate on record,

representing the de-facto complainant. An affidavit of service in that regard has been filed before the court let it be taken on the Court. The matter is taken for hearing in presence of all the parties.

2. The subject matter of the challenge before the Court by way of filing this application under Section 442, read with section 528 of B.N.S.S, 2023 is against an order passed by the learned Judicial Magistrate, 17th Court, Calcutta on July 29, 2025 by issuing warrant of arrest against the petitioner in connection with New Market Police Station case no. 42 / 2025 dated 11 .2. 2025, under Section 318(4)/316(4)/338/340(2)/339/61(2) of BNS, 2023.

3. Fact of the Case would reveal that the petitioner on the professional score is a property developer being the proprietor of a proprietary concern named and styled as Gautam Heights, engaged in the business of developing properties, real estate, construction, etc. On February 7, 2025 one Sayanta Das lodged one complaint with the Officer-in-charge of New Market, Police Station, alleging inter alia that the premises no. 52-A, Mahindra Sarkar Street, Kolkata 70012 is situated Opposite to the residence of the informant which measures about 1 cottah 15 chittack and until November 2024, there existed one storied and a partly constructed structure at the said premises without having any tenant. Subsequently, the structure situated at the said premises was demolished and the informant came to know that a five student building will be constructed at the said premises and the width of the street in front of the said premises is 16ft. as a result of which the permissible floor area ratio cannot permit a 5 storied building plan to be sanctioned by Kolkata municipal Corporation As considering the width of the street, not more than a 3 storied building can be built thereon. The informant made applications under the

Right to Information Act, 2005 with enquiries regarding the proposed construction of five storied building and the reply to such application disclosed that the Inspection book of Kolkata Municipal Corporation with respect to the premises had been forged and as per the reply to the said Right to Information Act, 2005, the Inspection book disclosed that the premises was partly tenanted and the name of the tenant is Joy Shah. It was further alleged that the owners of the premises fraudulently obtained the sanction plan of a building dishonestly taking advantage of Rule 142 of the Kolkata Municipal Corporation Building Rules, 2009 and accordingly the informant inspected the relevant Inspection Book going through proper channel, and he noticed that in the physical copy of the inspection book record for 1/1997-98 and 1/2003-2004 contained the name of Joy Shah, but in the scanned copy of the Inspection Book, such name was not mentioned. On the basis of such complaint, the New Market Police Station case no. 42 /2025 dated 11.2.2025 was registered under the aforesaid sections against the owners of the said building, but the name of the petitioner was not mentioned in the First Information Report.

4. The Learned Senior Advocate representing the petitioner would submit that during the course of investigation a notice was issued upon the petitioner on 10.3.2025, under section 179 of BNSS, 2023, thereby requesting him to report to the investigating officer at New Market Police Station within a period of 3 days and in compliance thereof, the petitioner reported the Investigating Officer On 15.3.2025, and thereafter he was redirected to appear with relevant documents on 30.3.2025 and the petitioner reported on 25.3.2025 and also submitted to the Investigating Officer, the necessary documents by virtue of a letter dated 25.3.2025. The documents were duly received by the investigating

officer on the same date and after completion of the investigation, the charge-sheet was submitted being Charge Sheet no. 96/2025, on July 8, 2025 against the owners of the properties along with the present petitioner.

- 5.** It is the specific contention of the Learned Senior Advocate representing the petitioner that curiously the charge-sheet did not specify the nature of documents supplied by the developers to the investigating officer and furthermore the charge-sheet indicates that despite attempts were made, the petitioner was not found and accordingly shown him as absconder. The learned Magistrate on the basis of the same on 29 July 2025, on receiving the charge-sheet, passed an order issuing warrant of arrest against all the accused persons, including the present petitioner fixing 29.8.2025, for filing the execution report of such arrest.
- 6.** Being aggrieved the petitioner has come before this Court for setting aside such order on the ground that the learned Magistrate failed to appreciate that in course of investigation, the present petitioner duly complied with the notice sent to him and joined the investigation and cooperated with them, and despite that, the warrant of arrest was issued against him with a false allegation as he never absconded nor intended to evade the due process of law. So the statement made in the charge-sheet that the petitioner was absconding has no factual foundation and thereby the order passed issuing warrant of arrest was not warranted. It is further submitted that the owners of the premises are the permanent residence of the premises and the same is also indicated in the charge-sheet and as per the charge-sheet, the investigating agency conducted several raids and searched for the accused persons and the developer, but did not find them in their given address when the complaint was

lodged by the informant which manifest that the premises in question has already been demolished. Two petitions are pending before this court filed by the petitioner which are still pending for disposal.

7. That apart, the issuance of warrant involves interference with the personal liberty and imprisonment means deprivation of the most precious right of an individual. Accordingly, prayed for setting aside the said order. The learned Senior advocate representing the de facto complainant, on the other hand raises objection and submits that there is no infirmities in the order passed by the Learned Court since the petitioner tried to evade the investigation and that apart the notice which was sent to the petitioner, was a notice to witness to which he supplied certain documents, but that does not amount to joining in the investigation. The charge-sheet was submitted thereafter, and therefore the facts narrated in the charge-sheet regarding absence of the accused person during search and raid was considered by the learned Magistrate while passing such order issuing warrant of arrest. It is his further case that the present petitioner committed the offence as alleged which is apparent since in the physical inspection book the name of Jai Saha can be found when in the scanned copy uploaded, no name of said person as tenant could be seen. However, that can be decided only in course of trial since the charge-sheet has been submitted against him.

8. The Learned Advocate representing the State respondent placed the Case Diary before this Court and further submits that only after completion of investigation, the charge-sheet has been submitted where it was mentioned by the investigating officer that despite search and raid the petitioner was not found and then only the charge sheet was submitted. The petitioner ought to

have prayed for grant of bail before the appropriate Court. More, so the Case Diary will reflect that the investigating officer conducted search and only thereafter has averred such treatment.

9. Heard the submission of the Learned advocates. The instant case is filed under section 442, section 520 of B.N.S.S, 2023 with the prayer to set aside the order dated July 29, 2025 passed by the Learned Judicial Magistrate, 17th Court, Calcutta there by issuing warrant of arrest against the petitioner in connection with the said New Market Police Station case no. 40/2025. It is settled now that High Court's power of revision is of exceptional nature and therefore, is to be exercise sparingly since the power is limited. The order passed on 29 July 2025 reflects that the charge-sheet was submitted against all the accused persons who are absconding and on perusal of the charge-sheet and other documents on record, warrant of arrest against the accused person was issued fixing date on 29 August 2025, for execution of such warrant. Prior to such order the order passed by the learned Court on 11 July 2025 reflects that the cognizance was taken in respect of the offence as mentioned in the charge sheet and the I.O further prayed for necessary permission to submit supplementary charge-sheet as per provision of law under Section 193 (9) of B.N.S.S and such permission whether allowed or not cannot be ascertained since the sentence is incomplete. It is mentioned as '*the prayer of I.O is..... So it is undisputed that the Learned Court was in such a hurry that he failed to complete the sentence which is a handwritten order and certainly it is not appreciable and the learned Court ought to have been more cautious while passing the order*'.

10. The contention of the Learned Senior advocate Mr. Edulji that the petitioner joined in the investigation still he was shown as absconder and he relied upon the notice under Section 179 B.N.S.S, 2023 which was addressed to the present petitioner whereby he was directed to comply with the directions mentioned therein and redirected to appear with relevant documents on 30 March 2025.. The reply given by the present petitioner on 25.3.2025 reveals that there had a discussion on 24th March, 2025, and accordingly the list of documents regarding the disputed premises were submitted which were received by the concerned New Market Police Station. According to Section 179 of B.N.S.S, 2023, which corresponds to section 160 of Code of Criminal Procedure which deals with the Police Officer's power to require attendance of witnesses in court of investigation and it is apparent that the petitioner complied with the same in the month of March 2025. But because he complied with such notice and submitted the documents it cannot be presumed that when the investigating authority made the search, despite his presence in the house, such statement has been made. The case diary primarily shows search by the IO which was considered by the learned Magistrate while passing the order of issuance of warrant of arrest. Whether there was any offence of forgery committed by the petitioner in the Inspection Book as alleged or not, can only be considered by the Learned Trial Court in course of trial.

11. Therefore, the charge-sheet was submitted in the month of July, which is long after the petitioner complied with the notice served upon him under section 179 of B.N.S.S and the charge-sheet was submitted in the month of July ,2025 leaving there by a gap of few months so the plea taken by the petitioner cannot be accepted .That apart even the charge-sheet has submitted

against the accused qua the petitioner ,he has not applied for an order of bail before the appropriate forum .Therefore this do not find any reason to interfere with the order passed by the Learned Magistrate.

12. Accordingly this revisional application stands dismissed.

13. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

