The Lucknow Bench of the Allahabad High Court on August 18, observed that for issuance of proceeding under Section 82 of the Code of Criminal Procedure (CrPC), the investigating officer has to seek the help of the Court, and only under the orders of the Court can a proclamation under Section 482 CrPC be issued.

A single-judge bench of Justice Saroj Yadav passed this order while hearing a petition U/S 482/378/407 filed by Kunwar Mahendra Pratap Singh @ Chandan Singh.

The Petition under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner to quash the non-bailable warrant dated June 08, 2021 issued by the Chief Judicial Magistrate, Ayodhya as well as the order dated July 02, 2021 issued under Section 82 Cr.P.C. against the petitioner in Case under Section 60-A, 60 of Excise Act and Sections 302, 307, 120B, 419, 420, 467, 468, 471, 472 and 34 of the Indian Penal Code, 1860, Police Station Gosaiganj District Ayodhya.

A further prayer has been made to direct the respondents not to arrest the petitioner in pursuance of the aforesaid orders.

Counsel for the Petitioner submitted that the Chief Judicial Magistrate has no power to issue NBW as well as proclamation under Section 82 Cr.P.C. against the Petitioner in a routine manner. The case is under investigation, so the Court has no ground to issue NBW as the Investigating Officer himself has power to arrest without warrant.

The Magistrate concerned has issued NBW and proceeded under Section 82 Cr.P.C. in a routine manner without applying its legal mind.

Additional Government Advocate opposed the submissions advanced by the Counsel for the Petitioner and submitted that if the person wanted in a crime evades arrest, then the Investigating Officer seeks the help of the Court to arrest the accused and complete the investigation.

A.G.A submitted that there is no illegality in the order issuing NBW and proclamation under Section 82 Cr.P.C. Hence, the Petition should be rejected.

The Court noted that the record shows that the First Information Report was registered at Police Station Gosaiganj, District Ayodhya. It has been stated in the F.I.R. that Dharmendra Kumar Verma, the son of the complainant died on April 01, 2021 while on the way to Lucknow for his treatment. The deceased became ill as he consumed toxic liquor on March 30, 2021 at the place of Rajnath Verma.

He was sent to Hospital at Gosaiganj from where he was sent to District Hospital, thereafter he was referred to Lucknow for better treatment but he died while on the way.

During investigation, the Investigating Officer moved an application before the concerned Magistrate for issuance of NBW against the accused person and proceeding under Section 82 Cr.P.C. as the accused is evading the arrest. The Magistrate passed the order accordingly.

Submission of the Counsel for the Petitioner is that the Magistrate is not empowered to issue such warrant and proceeding under Section 82 Cr.P.C.

As far as the legal position is concerned, if the accused evades the arrest during the investigation, no doubt the Investigating Officer has power to arrest the accused without warrant, if the offence is cognizable one, but for issuance of proceeding under Section 82 Cr.P.C., the investigating officer has to seek help of the Court and only under the orders of the Court, proclamation under Section 482 Cr.P.C. can be issued.

The Court stated, “Section 82(1) Cr.P.C. clearly shows that before issuance of proclamation under Section 82 Cr.P.C. issuance of NBW is necessary because Section 82 Cr.P.C. itself says that “if the Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself”, hence the issuance of NBW before proclamation under Section 82 Cr.P.C is necessary.

In the present matter, the investigation is going on, wherein a person died by consuming toxic liquor and the petitioner is wanted for the investigation. But it is also important that the Magistrate should not pass such an order in a routine manner, on the simple application of the Investigating Officer.

The application should be supported by an affidavit of the Investigating Officer stating the reasons why NBW and proclamation under Section 82 Cr.P.C. is required, as the issue relates to the personal liberty of a person guaranteed under Article 21 of the Constitution of India.

“Considering all these facts, the Petitioner is directed to appear before the Investigating Officer for investigation purposes or surrender before the Court concerned, if wanted in the concerned case, within seven days from today, if not already arrested or surrendered. In view of the aforesaid observation and direction, the present petition is disposed of,” the Court ordered.