

GAHC040012442024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : BA/93/2024

Bhabesh Tanti
Son of Shri Nadeswar Tanti, resident of Kalakhowa village, PO and PS Bokakhat,
Golaghat District, Assam.

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Adam Tatak, Tanur Gao, Tayom Gamoh, Logsang Yountan, Dejum
Tally, Tsering Gyatso

Advocate for the Respondent : P P of AP,

BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 04-10-2024

Heard Mr. T Gyatso, learned counsel for the petitioner. Also heard
Mr. G. Tado, learned Additional Public Prosecutor for the State.

2. This is an application filed under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita/ Section 439 of the Code of Criminal
Procedure praying for release of the alleged accused person, namely,

Shri Ananta Tanti on bail in connection with Session Case No.08/2019, arising out of Seijosa P.S. Case No. 10/2017 registered under Section 302/34 IPC.

3. The case of the petitioner is that the accused person was arrested on 7.06.2018, in connection with Seijosa P.S. Case No. 10/2017, and subsequently, he was released on bail. It is submitted that after completion of the investigation, the case was submitted into charge-sheet before the Chief Judicial Magistrate, Seppa Thereafter, the case was committed to the Court of Session Judge, Bomdila. The learned Sessions Judge then had issued summon against the accused person for his appearance. However, the accused had no knowledge about the issuance of summon against him. In the meantime, his surety also had died long back and therefore, he had no information regarding the issuance of summon against him by the Session Court. Hence, he could not appear before the Court.

4. However, thereafter, without considering the issuance of Bailable Warrant of Arrest (BWA) against the accused person, the learned the learned Session Judge directly had issued Non-Bailable Warrant of Arrest (NBWA) against the accused person on his none appearance before the said Court. And on execution of the said NBWA, the accused was arrested.

5. The learned counsel of the petitioner submits that on non-appearance of the accused after issuance of the summon, the learned Session Court ought to have issued a BWA first before resorting to

issuance of NBWA. However, the learned Session Court has directly issued Non-Bailable Warrant of Arrest (NBWA) against him for his appearance which is against the procedure. In support of his submission, the learned counsel for the petitioner has relied on the decision of Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Another**, reported in **(2022) 0 Supreme(SC) 588**. The relevant paragraph 32 is reproduced herein below:-

32. Considering the aforesaid two provisions, courts will have to adopt the procedure in issuing summons first, thereafter a bailable warrant, and then a non-bailable warrant may be issued, if so warranted, as held by this Court in [Inder Mohan Goswami v. State of Uttaranchal](#), (2007) 12 SCC 1. Despite the aforesaid clear dictum, we notice that non-bailable warrants are issued as a matter of course without due application of mind and against the tenor of the provision, which merely facilitates a discretion, which is obviously to be exercised in favour of the person whose attendance is sought for, particularly in the light of liberty enshrined under [Article 21](#) of the Constitution. Therefore, valid reasons have to be given for not exercising discretion in favour of the said person. This Court in [Inder Mohan Goswami v. State of Uttaranchal](#), (2007) 12 SCC 1, has held that:

“50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice—liberty is the natural and inalienable right of every human being. Similarly, [Article 21](#) of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal

liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- (i) it is reasonable to believe that the person will not voluntarily appear in court.*
- (ii) the police authorities are unable to find the person to serve him with a summon.*
- (iii) it is considered that the person could harm someone if not placed into custody immediately.*

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable

warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non- bailable warrant."

6. The learned counsel for the petitioner further submits that the applicant is the brother of the accused person and permanent resident of village Kalakhowa, P.O/P.S.Bokakhat at District Golaghat and he has undertaken to make the accused available before the Court for trial, as and when called. The accused has also undertaken to appear before the trial court, and as he is staying with the petitioner elder brother in the address given above, there is no possibility of his absconding.

7. Mr. G. Tado, learned Additional Public Prosecutor on the other hand submits that the accused remained absconding for about 5(five) years and was evading trial proceeding. Therefore, the learned trial Court had issued NBWA against him and since, the accused is from the outside the State, there is every possibility that the accused may jump

bail and remain absconding. Therefore, he vehemently objected to grant of bail to the accused till the completion of the trial.

8. Heard the submissions of learned counsel for the parties and also perused the record of the trial Court.

9. It appears that on non-appearance of the accused on summon, the learned Trial Court had directly issued NBWA against him. And in execution of the said NBWA, the accused was arrested on 10.01.2024 and since then he is still under the custody. The contention of the learned counsel for the petitioner is that after issuance of the summon, on non appearance of the accused, the learned trial Court ought to have issued Bailable Warrant of Arrest (BWA), however, the learned Session Court had directly resorted to issue Non Bailable Warrant of Arrest (NBWA) against the accused which according to the petitioner is against the procedure.

10. In view of the provision of the law and the decision of Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Another(Supra)**, and also considering that the accused had spent considerable period of time inside the jail custody, I am of the opinion that the accused is entitled for consideration for his release on bail. However, with strict terms and condition to ensure his appearance. Accordingly, this bail application is allowed.

11. The accused is directed to be released on bail on execution of

bail bond of Rs.20,000/- with 2(two) surety of like amount, one of which should be the resident of Arunachal Pradesh with the further condition that the accused person shall cooperate and appeared before the trial Court, as and when called for.

12. With the above observation, this bail application stands disposed of.

13. Return the records.

JUDGE

Comparing Assistant