

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No. 1014/2025

Date of pronouncement: 29.10.2025.

Harjeet Kour

.... Petitioner(s)

Through:- Ms. Deepika Pushkar Nath, Advocate.

V/s

UT of J&K

.....Respondent(s)

Through:- Mr. Saba Atiq, Advocate vice
Mr. P. D. Singh, Dy. AG.

CORAM : HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE.

ORDER
29.10.2025

1. Heard the learned counsel for the petitioner in respect of the matter and considered her submissions. Perused the memo of the petition and copies of the documents enclosed with the same as annexure thereto.
2. Through the medium of the instant petition, filed in terms of the provisions of Section 528 BNSS, the petitioner has sought the quashment/ setting aside the order dated 25.08.2025 passed by the Court of learned Additional Special Mobile Magistrate, R. S. Pura Jammu in a criminal case tilted "*State v. Gurmeet Singh & Ors.*" Filing no. 3/2020, registration date 07-07-2020 CNR.JKJM040002162020 arising out of a case FIR No. 0001 dated 03.01.2020 registered under Sections 341, 323, 504, 506 and 34 IPC of Police Station, Miran Sahib, Jammu whereby the learned trial Court has cancelled her exemption (petitioner's) as well as of her brother,

namely, Taranjeet Singh (accused No. 3) from their personal appearance that had already been granted to them.

3. It is submitted by learned counsel for the petitioner that accused Nos. 1 and 2 were present before the Court on the date of passing of impugned order i.e. 25.08.2025 and despite, the learned trial Court proceeded to cancel the personal exemption in favour of the petitioner and her brother (accused Nos. 3 and 4) with a further direction for issuance of non-bailable warrants of arrest against them.

4. It is submitted that since the petitioner and her brother had been duly exempted by learned trial Court from their personal appearance, as such, there was no justification for passing of the impugned order.

5. It is further submitted that the learned trial Court ought not to have directed for issuance of non-bailable warrants of arrest in the first instance.

6. The perusal of impugned order dated 25.08.2025 reveals that the prosecution witness, namely, Jaswant Singh who was present in the Court could not be examined by learned trial Court owing to non- appearance of the counsel for the accused. The impugned order further reveals that the said prosecution witness, Jaswant Singh had remained also present before the trial Court on earlier dates i.e. 24.12.2024, 28.10.2024 and 27.12.2024 on which dates also, he could not be examined due to the non-availability of the counsel for the accused. It is also revealed from the impugned order that the accused have been resorting to delaying tactics owing to which fact, the prosecution witnesses are being sent back unexamined.

7. The impugned order also reveals that the accused nos. 1 and 2 use to seek adjournments either by themselves or through proxy counsels. As per procedure, an exemption of an accused, from his personal appearance in justified cases is granted on his assurance that he shall be represented in the case by his/ her counsel so that no delay is caused in the proceedings of the case.

8. In the facts and circumstances of the case, learned trial Court does not seem to have done anything unwarranted under law and procedure, by cancelling the personal exemption of accused nos. 3 and 4. However, the learned trial Court ought to have issued summons or at the most, aailable warrant in the first instance against accused nos., 3 and 4 including the petitioners who were on proper exemption.

9. This Court is in full agreement with the contention of the learned counsel for the petitioner (A-4) that even upon the cancellation of the personal exemption of the accused nos. 3 and 4 including the present petition, there was no justification for issuance of a “Non-Bailable Warrant” of arrest in the first instance. The circumstances of this case are not covered under the provisions of Section 73 of the repealed code (Section 75 BNSS). The learned Magistrate ought to have issued a “summons” followed by a “Bailable warrant” in the 1st and 2nd instances, leaving the issuance of the “Non-Bailable warrant of arrest as a last resort in compelling circumstances.

10. This Court in its opinion feels fortified with the law laid down by the Hon’ble Apex Court in **“Sharief Ahmed & Anr v. State of UP & Anr.**, criminal appeal of 2024 arising out of SLP (CRL) No. 1074 of

2017, **2024 Live Law(SC) 337**, by the Hon'ble High Court of Jharkhand at Ranchi in **Mohd. Rustum Alam @ Rustum & Ors. v. the State of Jharkhand Criminal Cr. M. P. No. 2722 of 2019 decided on 27.04.2020** and also by Hon'ble High Court of Judicature at Bombay in **Arjun Amarjeet Rampal v. Income Tax Department in WP(C) No. 2579 of 2025 decided on 16.05.2025**, which cases have been relied upon by the learned counsel for the petitioner.

It is profitable to reproduce the relevant extracts of the referred judgments:-

Supreme Court of India

Sharief Ahmed and Another v. State of Uttar Pradesh and Anr. 2024 Live Law (SC) 337.

“46. We, however, would allow the present appeal to the extent that the non-bailable warrants issued against Manager Singh are unsustainable and should be quashed. It is a settled position of law that non-bailable warrants cannot be issued in a routine manner and that the liberty of an individual cannot be curtailed unless necessitated by the larger interest of public and the State. While there are no comprehensive set of guidelines for the issuance of non-bailable warrants, this Court has observed on several occasions that non-bailable warrants should not be issued, unless the accused is charged with a heinous crime, and is likely to evade the process of law or tamper/destroy evidence.

*47. Further, the observation that there is no provision for granting exemption from personal appearance prior to obtaining bail, is not correct, as the power to grant exemption from personal appearance under the Code should not be read in a restrictive manner as applicable only after the accused has been granted bail. This Court in **Maneka Sanjay Gandhi and Anr. v. Rani Jethmalani** held that the power to grant exemption from personal appearance should be exercised liberally, when facts and circumstances require such exemption. Section 205 states that the Magistrate, exercising his discretion, may dispense with the personal attendance of the accused while issuing summons, and allow them to appear through their pleader. While provisions of the Code are considered to be*

exhaustive, cases arise where the Code is silent and the Court has to make such order as the ends of justice require. In such cases, the criminal Court must act on the principle, that every procedure which is just and fair, is understood as permissible, till it is shown to be expressly or impliedly prohibited by law.”

High Court of Jharkhand at Ranchi

Mohd. Rustum Ahmad Rustum v. State of Jharkhand, (Cr M.P. No. 2722 of 2019 D.O.D. 27.04.2020)

*12. The Hon'ble Supreme Court in the case of **Raghuvansh Dewanchand Bhasin v. State of Maharashtra reported in (2012) 9 SCC 791** has held that issuing non-bailable warrant of arrest directly involves curtailment of liberty of a person. The Hon'ble Supreme Court took note of the earlier judgment in the case of **Inder Mohan Goswami v. State of Uttaranchal reported in (2007) 12 SCC 1**. Paragraph 12 of the judgment rendered in the case of Raghuvansh Dewanchand Bhasin (supra) is quoted hereunder:-*

“12. In Inder Mohan Goswami v. State of Uttaranchal, a Bench of three learned Judges of this Court cautioned that before issuing non-bailable warrants, the Courts should strike a balance between societal interests and personal liberty and exercise its discretion cautiously. Enumerating some of the circumstances which the Court should bear in mind while issuing non-bailable warrant, it was observed (SCC pp. 17-18, paras 53-55)

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:

It is reasonable to believe that the person will not voluntarily appear in Court; or the police authorities are unable to find the person to serve him with a summon; or 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 compliant cases, at the first instance, the court should direct serving of the summons along with the copy of the compliant. 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.''

High Court of Judicature at Bombay.

Arjun Amarjeet Rampal v. Income Tax Department, (Writ Petition No. 2579 of 2025 DOD 16-05-2025).

"4. The learned Magistrate, however, not taking into consideration such position, has mechanically passed the order issuing the non-bailable warrant against the petitioner in a bailable offence. On a perusal of the said order, it is clear that no reasons are recorded. In my view, it is cryptic order which lacks application of mind. This would cause prejudice to the petitioner in the given the facts and circumstances as he would face an order of non bailable warrant in a case of bailable offence. Further according to the learned counsel for the petitioner, the Advocate for the petitioner was very much present when the said order dated 9 April 2025 was passed, which was overlooked by the learned Magistrate."

11. In the backdrop, the instant petition is **disposed of** with a direction to learned trial Magistrate to recall the non-bailable warrants of arrest against the accused Nos. 3 and 4 including the petitioner, if still in force and reconsider their exemption from their personal appearance subject to their representation at the trial by their learned counsel.

12. The petitioner (accused A-4) is directed to appear in person before the learned trial Court on the forthcoming date of hearing of the case. The accused No.3, who is the brother of the petitioner and is reported to be studying outside the UT of Jammu and Kashmir, shall appear at the trial through his learned counsel, till the reconsideration of his formal exemption, by the learned trial Court.

13. **Disposed of.**

(Mohd. Yousuf Wani)
Judge

JAMMU
29.10.2025
NEHA-1

