

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 651 of 2015

1. Sachin Singh, S/o. Shri Budhlal, Aged About 18 years, Occupation – Student.
2. Hiralal, S/o. Sukhdev Ram, Aged About 37 Years, Occupation – Teacher (Shikshakarmi)

Both R/o Village & Post Surta, Police Station & Teh. Ramanujnagar, Rev. and Civil Distt. Surajpur, Chhattisgarh.

---- **Petitioners**

Versus

1. State Of Chhattisgarh, Through : Station House Officer, Police Station Civil Lines, Rev. & Civil Distt. Bilaspur Chhattisgarh.

---- **Respondent**

For Petitioners	:	Mr. Surfaraz Khan, Advocate
For State/respondent	:	Ms. M. Asha, P.L.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

29/07/2015

1. Learned counsel for the petitioners submits that by an order dated 16.07.2015, the learned Sessions Judge, Surajpur took cognizance under Section 319 of Cr.P.C. in a Sessions Trial No.15/2015, in between State of Chhattisgarh & Sukhdev Singh and others, which is under Section 147, 148, 149, 294, 307, 302, 325 of I.P.C.. He confined his argument to the extent that the arrest warrant could not be issued against the petitioners, at first instance and therefore, it would be violative of Article 21 of the Constitution of India. It is

contended that the Hon'ble Supreme Court time and again has ruled that an accused should have been summoned and in case they failed to appear, then only, the arrest warrant should have been issued. He therefore, submits to the extent that arrest warrant as has been issued should be canceled and the petitioners may be directed to appear through summon.

2. Perusal of the order dated 16.07.2015 would reveal that the learned Sessions Judge at the time of evidence on the application moved by the complainant, Mohan Yadav, under Section 319 of Cr.P.C. came to the subjective satisfaction that prima-facie case is made out for taking cognizance against the petitioners under the aforementioned sections. Consequently, the cognizance was taken under Section 147, 148, 149, 294, 307, 302, 325 of I.P.C. and arrest warrant was issued for presence of the petitioners on 03.08.2015.
3. The Hon'ble Supreme Court in case of ***Vikas Vs. State of Rajasthan, reported in (2014) 3 SCC 321***, has occasioned to consider the issuance of arrest warrant at the very first instance. The Court while deciding, laying down the principle observing that Section 319 Cr.P.C. indicates that on the objective satisfaction of the Court a person may be “arrested” or “summoned” as the circumstances of the case may require if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons. The Court should exercise judicial discretion on a consideration of the totality of the facts and circumstances of a given case and in a manner where

proper procedures are followed that are fundamental to the right of fair trial of the accused. The Court further observed that Section 319 Cr.P.C. demands more circumspection by the Trial Court while exercising its powers since it confers an extraordinary power and should be used by the Court very sparingly but at the same time balance with right guaranteed to the individual under Article 21 of the Constitution of India, which guarantees the right to life and liberty to its citizens. The Hon'ble Supreme Court at para-17 has held as under :-

“17. In the legislative history for the purposes of bail, the terms “bailable” and “non-bailable” are mostly used to formally distinguish one of the two classes of cases viz. ‘bailable’ offences in which bail may be claimed as a right in every case whereas the question of grant of bail in non-bailable offences to such a person is left by the legislature in the Court's discretion to be exercised on a consideration of the totality of the facts and circumstances of a given case. The discretion has, of course, to be a judicial one informed by tradition methodised by analogy, disciplined by system and subordinated to the primordial necessity of order in social life. Another such instance of judicial discretion is the issue of non-bailable warrant in a complaint case under an application of Section 319 Cr.P.C. The power under Section 319 Cr.P.C. 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 and accused 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. The conditions for the issuance of non-bailable warrant are reiterated in *Inder Mohan Goswami and in State of U.P. Vs. Poosu*, wherein it is mentioned that : (*Inder Mohan Goswami case, SCC p. 17, para 53*)

“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 firstly it is reasonable to believe that the person will not voluntarily appear in court; or secondly that the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 Cr.P.C. would extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case.”

4. On reading of the order would show that after taking cognizance at the first instance, the Court has issued arrest warrant for appearance of petitioners. The order purports that Court has not recorded objective satisfaction as to necessity of the same, therefore, following the principle laid down by their Lordship, issuance of non-bailable warrant at the very inception to the petitioners for their appearance would trench upon the personal liberty guaranteed to the petitioners under Article 21 of the Constitution of India.

5. In a result, the part of the observation that the petitioners should be produced by way of arrest warrant before the Court is set-aside. It is observed that if the order of arrest warrant has been ordered to the State, the same shall not be executed.
6. Since the petitioners are already appeared before this Court and the next date before the Court below is shown as on 03.08.2015, therefore, it is directed, the petitioners shall keep themselves present before the Court below on such date of 03.08.2015.
7. With such observation, the petition stands disposed off.

Sd/-
(Goutam Bhaduri)
Judge