

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 157 of 2016**

Ramratan S/o Itwari Mochi Aged About 30 Years R/o Goindra Police Station
- Pathariya District - Bilaspur (Now Mungeli) Chhattisgarh

---- Petitioner**Versus**

State Of Chhattisgarh Through - Police Station - Pathariya District Bilaspur
(Now Mungeli) Chhattisgarh

---- Respondent

For Petitioner	:	Mr. Hemant Kesharwani, Adv.
For Respondent	:	Ms. M. Asha, PL.

Order On Board**11/02/2016**

1. Heard on motion.
2. Brief facts of the case are that Cr. Case No. 358/2013 (State -v- Ramratan) under Sections 294, 323, 506-B and Section 325 of the Indian Penal Code is pending before the Judicial Magistrate First Class, Mungeli. Perusal of order sheet dated 30-1-2015 goes to show that the matter is pending from 2001, the accused did not give his appearance since 2-6-2014. On 15-7-2014, there was an order to issue warrant of arrest against him. Since then 4 time warrants have been issued. The warrant dated 27-9-2014 returned unserved with the endorsement that his whereabouts are not known. As the petitioner is not traceable, the court observed that there is no possibility of securing presence of the petitioner in near future hence court below proceeded under Section 299, Cr.P.C. and declared him absconding and also issued a permanent warrant of arrest. Against said order, the petitioner had filed a bail petition No. 356/2015 before the Additional Sessions Judge, Mungeli under Section 438, Cr.P.C. On 11-1-2016, the same was dismissed as withdrawn as the petitioner did not press the petition on merit. Thereafter the petitioner filed instant Cr.M.P. invoking inherent power of this Court vested under Section 482, Cr.P.C. praying that the order dated 30-1-2015 being against the fact and circumstances be set aside. The criminal rule of Practice or provisions in the Criminal Procedure Code does not contemplate the presence of the accused, merely because the accused fails to remain present on any particular date of hearing, issuance of non-bailable warrant is not justified at all without ascertaining cause of his absence. It is further submitted that in case of his non-appearance, summon or bailable warrant

should be issued. Offence registered against the petitioner is not serious offence and he is suffering since 2001 without any fault on his part. The application on behalf of the accused along with memo of appearance ought to have been received by the learned Magistrate. Learned court below failed to appreciate the fact that as the record has been sent to record room at Bilaspur, hearing of the case would not be possible if petitioner makes his appearance. Hence the petition may be allowed and the impugned order be set aside and direction may be issued to the Magistrate concerned to hear the petition for cancellation of warrant of arrest.

3. Learned counsel for the petitioner supported the grounds taken in the petition and submits that on the basis of the grounds taken in the petition, the same may be allowed and the relief as sought may be granted. In support of his contention, he placed reliance in the order passed by this Court in CRMP No. 960/2015 (Smt. Vimla Anand -v- State of CG), a case of a lady who failed to appear before the court below on account of demise of her brother and since the bail was granted by this Court, and it would have been futile exercise to pray for cancellation of bail before the court, the Coordinate Bench of this Court directed that if warrant is issued, it be called back. The applicant has to furnish afresh bail bond of Rs. 10,000/- with one surety to the like sum to the satisfaction of the trial Court and allowed the petition. Further reliance is placed on **Chundru Ammanna -v- The Authority under A.P. Shops and Establishments Act (1988)** and another reported in 2000 Cr.L.J. 2032 of the Andhra Pradesh High Court wherein the petitioner could not appear on the date fixed for his presence and non-bailable warrant was issued, the petitioner's counsel had filed an application for recalling the non-bailable warrant along with memo of appearance which was returned to the counsel, the AP High Court held that as the petitioner was not given an opportunity of being heard through his advocate for filing the petition for recalling the non-bailable warrant, directed cancellation of non-bailable warrant and directed the petitioner to appear before the Magistrate on a particular date and thereafter learned Magistrate would bind him over on such terms as considered proper.
4. For consideration of the arguments advanced, I have perused the instant petition and the order dated 30-11-2015.
5. Close scrutiny of the petition and its annexures goes to show the case is pending since 2001. Accused failed to appear since 2-6-22014. Four times warrant of arrest have been issued which have been returned unserved as the accused is not traceable. Thereafter the court below as per provisions

of Section 299 of the Cr.P.C. proceeded and issued permanent warrant of arrest and sent the record to the record room.

6. On due consideration, after perusal of the entire order sheet, I do not see any illegality or impropriety in the impugned order. In view of the facts mentioned in the order sheet which are not contradicted by any other facts, in the considered view of this Court the order passed by the court below is strictly in accordance with law.
7. As regards the case laws cited by learned counsel for the petitioner, in the case of Smt. Vimla Anand (supra), the petitioner was a lady and failed to appear for one date on account of demise of her brother. On consideration of the fact the coordinate bench of this court ordered for furnishing of fresh bail as the bail order was granted by the High Court. There is no material to show that in the matter in hand whether it is the High Court which ordered for bail or not and also looking to the non-appearance since long, the case law cited is not applicable to the present case.
8. In Chundru Ammanna (supra), it was a matter of petty offence. Summons were issued to the petitioner as the petitioner could not remain present on the date fixed for his appearance. Thereafter the non-bailable warrant was issued and when the petitioner engaged a lawyer who had filed his memo of appearance along with application for recalling of non-bailable warrant, the same was returned by the court below. In these circumstances, the High Court of Andhra Pradesh ordered regarding appearance of the petitioner before the Magistrate on a fixed date and also directed that learned Magistrate shall bind him over on such terms as he considers proper. In the present case, the matter does not relate to petty offence. On the other hand, looking to Section 506-B of IPC and other sections as mentioned in certified copy, it goes to show that it is a warrant trial case and in a warrant trial case the petitioner by non-appearance since long jumped the condition of the bail and bond. Therefore, the case of Chundru Ammanna (supra) is not applicable to the fact of the present case. Even as per settled provisions of law, if anybody jumps the terms and conditions of the bail, then he cannot claim bail again as a matter of right.
9. Also perusal of the order sheet dated 11-1-2016 in Bail Application No. 356/2015 shows that it was dismissed as not pressed on merit. This court failed to understand, if at all an application under Section 438, Cr.P.C. was preferred why the applicant not contested the same and get an order on merit.

10. On due consideration of the entire facts, I do not see any reason to interfere with the order dated 30-1-2015 passed by the court below. The petition being devoid of merit deserves to be and is hereby dismissed at motion stage itself.

Sd/-

(Chandra Bhushan Bajpai)

Judge

Pathak