

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 18th March, 2016

+ **CRL.M.C. 1129/2016**
PRATAP VERMA

..... Petitioner

Through: Mr. Aditya Jain, Advocate

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Ashok Kumar Garg, APP along with
SI Raj Kumar, PS Neib Sarai.

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

: SUNITA GUPTA, J. (ORAL)

Crl. M.A. No. 4872/2016 (exemption)

Allowed subject to just exceptions.

Application stands disposed of.

Crl. M.C. No.1129/2016

1. Notice. Mr. Ashok Kumar Garg, Additional Public Prosecutor for the State accepts notice.

2. I have heard the learned counsel for the parties.

3. This petition is directed against the order dated 10th March, 2016 and 14th March, 2016 passed by the Additional Sessions Judge-01, South District, Saket Court vide which non-bailable warrants were issued against the petitioner with notice to surety for 7th April, 2016 and his subsequent application for cancellation of non-bailable warrants was dismissed.

4. Counsel for the petitioner submits that the petitioner was diligent and regular in appearing before the Court. On 10th March, 2016, counsel for the petitioner was present in the Court and he had requested the Court to wait for the accused. Despite his request, during early hours at 11:00 a.m. itself, non-bailable warrants were issued against the petitioner with notice to his surety. Counsel further submits that on the same date, the accused did appear before the Court and also moved an application seeking cancellation of non-bailable

warrants stating therein that he got late in appearing before the Court as he was attending his uncle who was admitted in AIIMS. He was travelling in bus and there was heavy traffic due to which he got late. The counsel had also requested the Court that the accused will be late by 20-30 minutes but instead of waiting for the accused, his non-bailable warrants were issued and the application was also dismissed. He was taken in custody.

5. Reliance has been placed on *Naresh Kumar vs. State*, 131 (2006) DLT 678 for submitting that non-bailable warrants should not be issued during early hours of morning.

6. Reliance has also been placed on *Inder Mohan Goswami and Anr. vs. State of Uttaranchal and Ors.*, (2007) 12 SCC1 for submitting that non-bailable warrants should not be issued casually and mechanically as the same involves interference with the personal liberty of an individual.

7. Counsel has placed on record the medical documents showing the illness of uncle of the petitioner and that he is admitted in All India Institute of Medical Sciences. He further submits that there was no difference in version given by the counsel and the averments made in the application as the Court was apprised that the accused had fallen at metro station. He went to hospital and while returning from hospital in a bus, he got late. So, he could not appear in time. It is submitted that this aspect should have been considered by the learned Additional Sessions Judge while considering the application for cancellation of NBW which was moved on the very same date. As such, the impugned order be set aside.

8. Learned Additional Public Prosecutor for the State, on the other hand, refers to the order dated 14th March, 2016 whereby the Court observed that the counsel had informed the Court on 10th March, 2016 that accused had fallen from metro train and, therefore, he was unable to appear in time whereas in the application, it was alleged that he was attending his ailing uncle and subsequently due to heavy traffic, his bus got late and he could not appear in time. As such, the grounds were not consistent and the application was rightly dismissed.

9. In ***Inder Mohan Goswami*** (supra), Hon'ble Supreme Court discussed the issue as to how and when warrants should be issued by the Court. The relevant observations find mention in para 47 to 57 and it will be advantageous to reproduce the same which is as follows:-

47. *Before parting with this appeal, we would like to discuss an issue which is of great public importance, i.e., how and when warrants should be issued by the Court? It has come to our notice that in many cases that bailable and non-bailable warrants are issued casually and mechanically. In the instant case, the court without properly comprehending the nature of controversy involved and without exhausting the available remedies issued non-bailable warrants. The trial court disregarded the settled legal position clearly enumerated in the following two cases.*

48. *In Omwati v. State of UP and Anr., this Court dealt with a rather unusual matter wherein the High Court firstly issued bailable warrants against the appellant and thereafter by issuing non-bailable warrants put the complainant of the case behind bars without going through the facts of the case. This Court observed that the unfortunate sequel of such unmindful orders has been that the appellant was taken into custody and had to remain in jail for a few days, but without any justification whatsoever. She suffered because facts of the case were not considered in proper perspective before passing the orders. The court also observed that some degree of care is supposed to be taken before issuing warrants.*

49. *In State of U.P. v. Poosu and Anr., 1976 Cri LJ 1373 at para 13 page 5, the Court observed:*

Whether in the circumstances of the case, the attendance of the accused respondent can be best secured by issuing a bailable warrant or non-bailable warrant, is a matter which rests entirely in the discretion of the court. Although, the discretion is exercised judiciously, it is not possible to computerize and reduce into immutable formulae the diverse considerations on the basis of which this discretion is exercised. Broadly speaking, the court would take into account the various factors such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and the State.

Personal liberty and the interest of the State

50. *Civilized countries have recognized 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 the 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 civilized 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 of 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 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 straight-jacket 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.*

10. In ***Naresh Kumar***(supra), the situation was substantially similar. The accused could not appear in the Court in time due to change in Court Room. His non-bailable warrants were issued at 10:30 a.m. He appeared before learned MM at about 10:40 a.m. He thereafter moved an application for

cancellation of non-bailable warrants. Instead of considering the application, the same was adjourned and execution of non-bailable warrants was not stayed. Facing threat of arrest, the petitioner approached this Court. Provisions of Rule 3 of Chapter 1, part 0C(i) in Part III of Delhi High Court Rules were referred which reads as under:-

"Rule 3.

Warrant should not be issued unless absolutely necessary—

"Great care should be taken not to issue a warrant when a summon should be sufficient for the ends of justice. Magistrate should remember that the issue of a warrant involves interference with the personal liberty of a person and should take care to see that no greater hardship is caused than is necessary. Under Section 76 of the Code (now Section 71 of new Code) a Court has the discretion to make the warrant bailable, and this discretion should be exercised with due regard to the nature of the offence, the position of the accused person and the circumstances of the case."

11. Reference was made to ***Puneet Singh Chauhan & Anr. vs. State & Anr.***, 207(2003) DLT 220 where it was observed that the Trial Courts are acting contrary to the aforesaid mandate of law while issuing non-bailable warrants on the very first call and in the pre-lunch hours. If an accused tries to evade the process of law or intentionally delays the proceedings, the Magistrate has the power to issue non-bailable warrants. Such a power is, however, to be exercised only in those circumstances and not lightly and not in *terrorem*.

12. In the instant case, a perusal of the order dated 10th March, 2016 goes to show that two prosecution witnesses, namely, Dr. Hari Prasad and SI Vinod, Investigating Officer of the case were present for their examination. Dr. Hari Prasad has come from Sikar, Rajasthan to depose. Since the counsel for the accused was very much present in the Court, the Court could have examined the doctor in the presence of counsel for the accused as for the purpose of his examination, identity of the accused would not have been material. Moreover, the counsel was not seeking exemption of the accused but was merely seeking passover of the matter. Furthermore, bonafides of the accused are also reflected from the fact that on the same date, the application for cancellation of non-bailable warrants was moved by him explaining the reason which resulted in delay in reaching the Court. The application was taken up on 14th March, 2016 and one of the factors for rejection of the application was that Dr. Hari Prasad had come from Sikar, Rajasthan and a sum of Rs.2,500/- was paid as diet money to him. The petitioner, at best, could have been burdened with cost of diet

money which was paid to Dr. Hari Prasad. Keeping in view the totality of facts and circumstances, which reflects that non-bailable warrants were issued in early hours of the day and the subsequent application moved on the same date did not find favour with the learned Additional Sessions Judge resulting in dismissal of the application on 14th March, 2016 by taking the petitioner in custody. The impugned orders under the circumstances, cannot be sustained and are accordingly set aside. Since the surety bond has not so far been forfeited, the accused to remain on bail on his original surety. He be released from jail if not wanted in any other case. The petitioner is further directed to pay the diet money to Dr. Hari Prasad when he will appear to depose in the Court.

With these observations, the petition stands disposed of.

Intimation be sent to Superintendent Jail to release the petitioner forthwith if not wanted in any other case.

Copy of the order be given *dasti* to counsel for the parties.

(SUNITA GUPTA)
JUDGE

MARCH 18, 2016/*rs*