

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 158 of 2017**

Harish Pandey, S/o Late Jairam Pandey, Aged about 56 years,
R/o House No.340, Panchwati Nagar, Mowa Raipur (C.G.)

---- Applicant**Versus**

State of Chhattisgarh, Through Station House Officer, P.S. Anti
Corruption Bureau, Raipur (C.G.)

---- Non-applicant

For Applicant : Mr. Kanak Tiwari, Senior Advocate
assisted by Shri Varun Sharma,
Advocate.

For Non-applicant/State: Mr. Gary Mukhopadhyay, Dy. GA

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/04/2017**

Heard.

(1) The State of Chhattisgarh through Anti Corruption Bureau registered a Criminal Case against the applicant for commission of offence punishable under Section 13(1)(e) & 13(2) of the Prevention of Corruption Act, 1988 (for short ' PC Act, 1988) on 08.09.2010 and the petitioner cooperated in the investigation conducted by Anti Corruption Bureau.

(2) On 16.12.2016, Superintendent of Police, Anti Corruption Bureau issued notice to the applicant for his appearance before the Special Judge (PC Act, 1988) on 19.12.2016, but the petitioner was not served such notice as he claimed to be on leave on that day, but charge sheet

also could not be produced on that day by the Anti Corruption Bureau. The charge sheet was submitted before the Special Judge (PC Act) on 20.12.2016 and on that day Farari Panchnanama was prepared against the applicant and the Special Judge (PC Act) straightway directed for issuance of non-bailable warrant of arrest against the applicant.

(3) The applicant filed an application under Section 70(2) of the Code of Criminal Procedure for cancellation of non-bailable warrant of arrest. By the impugned order, the trial Court has rejected the said application, against which this writ petition under Section 482 of the Cr.P.C. has been filed by the petitioner questioning the same.

(4) Shri Kanak Tiwari, learned Senior Counsel appearing for the applicant would submit that the applicant has fully cooperated in the investigation and no notice was served to him for his appearance on 19.12.2016; and no fresh notice has been issued for securing his presence on 20.12.2016 and straightway warrant of arrest has been issued, which is in teeth of decision rendered by the Supreme Court in the matter of **Inder Mohan Goswami and another Vs. State of Uttaranchal and others**¹.

(5) On the other hand, Shri Gary Mukhopadhyay, learned Deputy Govt. Advocate for the State would submit that sufficient steps has been taken to secure the presence of petitioner before the Special Judge (PC Act) but when presence of the petitioner was not secured, Farari Panchnanama was prepared and charge sheet has been filed against the applicant on 20.12.2016 in his absence and, therefore, the Special Judge (PC Act) is fully justified in issuing non-bailable warrant

1 (2007) 12 SCC 1

of arrest against the applicant and, thus, no interference is required warranting interference by this Court under Section 482 of the Cr.P.C.

(6) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove with utmost circumspection.

(7) In the case of **Inder Mohan Goswami (supra)**, Their Lordships of the Supreme Court has clearly held that the Court should very careful before issuing non-bailable warrant of arrest against the applicant as issuance of these non-bailable warrants involves personal liberty of the person concerned. Paragraphs 53,54,55, 56 & 57 of the judgement states as under:-

“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 ramification 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 straightjacket 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.”

(8) Applying the ratio of law laid down by the Supreme Court in the above referred case **Inder Mohan Goswami (supra)**, it is quite vivid that in the instant case the notice of appearance of the applicant was issued on 19.12.2016 and no charge sheet has been filed on that day; on the next day i.e. 20.12.2016 charge sheet was filed against the applicant but no notice was issued & served to him for that day and straightway without making any effort to get him served for 20.12.2016, non-bailable warrant of arrest has been issued against the applicant, which is impermissible in law.

(8) Accordingly, Order impugned so far as refusing to cancel the non bailable warrant of arrest and the order issuing non-bailable warrant of arrest are set aside. The non-bailable warrant issued be recalled. The Special Judge (PC Act) is directed to proceed strictly in accordance with law. However, the applicant is at liberty to file appropriate bail application before the appropriate Court in accordance with law.

(9) The Cr.M.P. is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-

