

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRMP No. 1074 of 2018**

Gyaneshwer Prasad Dubey S/o Giriwar Prasad Dubey, Aged About  
62 Years R/o Near Kosabadi, Ramanujganj Road, P.S. Ambikapur,  
District Surguja (Chhattisgarh)

---- Petitioner

**Versus**

State Of Chhattisgarh Through S.H.O. Anti Corruption Bureau,  
Bilaspur Division Bilaspur Chhattisgarh.

---- Respondent

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For petitioner - Shri B.P. Singh, Advocate.  
For State- Shri Ashish Shukla, Dy.A.G.

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**Hon'ble Shri Justice Goutam Bhaduri**

**Order**

**19/06/2018**

Heard.

1. Instant petition is against the order dated 18/05/2018 whereby an application filed under section 70(2) of Cr.P.C. to recall the arrest warrant has been dismissed is under challenge.
2. Brief facts of this case are that on 31/01/2018 ACB Raipur filed a charge sheet against the petitioner. It has been contended that the petitioner since was absent as such court issued arrest warrant against the petitioner. Thereafter, petitioner had moved an application under Section 70(2) of Cr.P.C. to cancel the said arrest warrant, however same was dismissed, therefore same is subject of challenge.
3. Learned counsel for the petitioner would submit that issuance of arrest warrant without any notice or summon and bailable warrant in the facts of this case would be completely against the principles laid down in case of **Inder Mohan Goswami & Anr. Vs. State of Uttaranchal and Ors.** reported in **(2007) 12 SCC 1**. It is stated that issuance of arrest warrant without any application of mind would amount to defeat principles

laid down by the Supreme Court and further submit that the petitioner is ready to cooperate and since alleged incident was of 2016 after he remitted the office and he was under treatment in different city after his retirement unless and until notice are served, direct arrest warrant could not be issued as it has serious ramification.

4. Perused the documents filed alongwith the petition. Order sheet of the court below reflects that the petitioner was shown as absconding from 4/01/2018, 11/01/2018 and 26/01/2018 from his residence. The period of absconding shown within a short span of time for 4/01/2018 to 26/01/2018. Principle which has been laid down by the Supreme Court in case of **Inder Mohan Goswami** (supra) is that 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 which may also be issued, the discretion is to be exercised judicially. It has been stated that personal liberty and the interest of the State Civilized countries have recognized that liberty is the most precious of all the human rights. It has been further held that 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.

5. In case of **Inder Mohan Goswami** (supra) the Supreme Court in paragraphs 53 to 57 has laid down 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 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 courts 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.”

6. Applying the aforesaid test in the instant case it appears that within short span of time between 4/01/2018 to 26/01/2018 the petitioner has

been shown to be absconding from his house whereas petitioner claims to be taking his treatment at Bangalore. Therefore, applying the aforesaid principles arrest warrant which has been issued against the petitioner is cancelled. Petitioner shall be at liberty to approach the court below and file appropriate bail petition which would be decided by the court below on its own merit.

7. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE