

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1389 of 2018

1. Komal Chandse, S/o. Shri Sahtik Chandse, Aged About 51 Years.
2. Satyendra Chandse, S/o. Shri Komal Chandse, Aged About 32 Years.
3. Vijyendra @ Bijju Chandse, S/o. Shri Komal Singh Chandse, Aged About 26 Years.

All are R/o. Village Birkona, Police Station & Tahsil Pandariya, District Kabirdham Chhattisgarh

---- **Petitioners**

Versus

1. Bhairam @ Judavan Patel, S/o. Ri Lalluram, Aged About 50 Years, R/o. Village Somnapur, Police Station & Tahsil Pandariya, District Kabirdham Chhattisgarh
2. Ramchand Patel, S/o. Gaukaran Patel, Aged About 35 Years, R/o. Village Padhi, Police Station & Tahsil Pandariya District Kabirdham Chhattisgarh

---- **Respondents**

For Petitioners : Mr Vaibhav A. Goverdhan, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

31.07.2018

Heard

1. The present petition is against the order dated 17.04.2018 whereby on a complaint filed by the respondents, the offence has been registered under Section 420 read with Section 34 of Indian Penal Code and arrest warrant has been issued for their appearance.
2. Learned counsel for the petitioners, at this stage, without going into the merits of this case, submits that the arrest warrant at the first instance would not have been issued as per the law laid down in case of ***Inder Mohan Goswami & Another v. State of Uttaranchal & Others*** reported in ***(2007) 12 SCC 1***. Therefore, reserving their right to contest the case on merit, it is contended that what incident appeared in a commercial transaction, the petitioner may be allowed

to appear before the Court and furnish the bail bond accordingly to the order of the Court below.

3. Perused the order dated 17.04.2018 wherein it appears that the Court below at the first instance registered the complaint under Section 420 read with Section 34 of I.P.C. and have issued the warrant of arrest.
4. The Supreme Court in case of ***Inder Mohan Goswami*** (supra) has laid down the following principles :

“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 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.

5. Following the aforesaid principles and the ratio laid down by the Supreme Court, it is observed that the order of the non-bailable warrant issued against the petitioners is quashed. It is directed that the petitioners shall appear before the concerned Court and may apply for bail, which may be dealt by the Court according to its own merit on the next date of hearing.
6. With such observation, the petition stands disposed off.

Sd/-
Goutam Bhaduri
Judge