

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1 of 2019

- Shobhashri Jewellers Through Its Proprietor Shrikant Soni, S/o Satyendra Soni, Aged About 29 Years, Shobhashri Jewellers, R/o Near Kadambi Chowk, Sadar Road, Ambikapur, District Surguja Chhattisgarh

---- Petitioner

Versus

- Akshay Kumar Rajwanshi S/o Late Mulchand Rajwanshi Aged About 47 Years R/o C- Block, Rawat Residency, Manendragarh Road, Ambikapur District Surguja Chhattisgarh

---- Respondent

For Petitioner : Shri Ravindra Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

14/01/2019

1. Heard.
2. The present petition is for cancellation of permanent arrest warrant issued against the petitioner on 25.09.2018 by the JMFC, Ambikapur in criminal case No.87/2014. Initially on 04.08.2018, the arrest warrant was issued against the petitioner and subsequently on 25.09.2018 the permanent arrest warrant was issued and the petitioner was declared absconding.
3. Learned counsel for the petitioner would submit that the petitioner though was served initially in the year 2015, however, since he was to treat his wife, he was traveling to different hospitals from Vishakhapatnam to Banguluru. He further

submits that non-appearance was not deliberate and even the notice which was issued was served on the uncle of the petitioner not in person and prays that one chance may be given to him so that he can appear before the Court below so as to defend his case and the case pertains to complaint under Section 138 of the Negotiable Instruments Act.

4. Perused the documents and the order-sheet. The summons of 21.08.2015 at the back records that the summons was served on the uncle of the petitioner not in person to the petitioner. The bulky documents which have been placed for perusal would show that the wife of the petitioner was admitted to the Appolo Hosiptal initially at Bhubneshwar on 19.02.2014 and the documents show that she was under treatment in different hospitals and the different summon reports which was uptill 2017 for appearance on 14th of December 2017 also shows that the petitioner was not served.
5. The Supreme Court in the case of ***Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and another {2012 (2) CCSC 730 (SC)}*** has laid down the procedure of issuance of non-bailable warrant. The ratio as has been laid down shows that non-bailable warrant cannot be issued mechanically and the power has to be exercised judicially and not arbitrarily. In the case of ***Inder Mohan Goswami and another Vs. State of Uttaranchal and others {(2007) 12 SCC 1}*** the Supreme Court has cautioned that before issuing non-bailable warrants, the Courts should strike a balance between societal interests and personal liberty and exercise its discretion cautiously. Enumerating some of the circumstances which the Court should bear in mind while issuing non-bailable

warrant, it was observed:-

"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 summons; 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 summons will suffice in getting the appearance of the accused in the court, the summons 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 alongwith 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."

6. The record would show that the arrest warrant was of 04.08.2018, however, for 04.08.2018 the record do not reflect that the bailable warrant service was effected. Only the warrant has been issued for the reason that the proceedings under Section 138 was pending since 2013, therefore, the order dated 25.09.2018 also shows that the permanent arrest warrant has been issued,

he was not served. Considering the aforesaid facts, it appears that the petitioner was not even served once, even the initial service was effected on the uncle. Therefore, taking into the bulky documents, the petitioner prima facie appears to be out of station for treatment of his wife, no prejudice would be caused if the petitioner is granted one opportunity to defend his case. Accordingly the order dated 04.08.2018 and 25.09.2018 are quashed. Now the petitioner shall appear before the JMFC, Ambikapur on 25th of February, 2019 and may file the application for bail and the JMFC, shall proceed accordingly and commence the trial in accordance with law.

7. With such observation the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu