

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 1570 of 2019**

Sachin Dhadiwal, Aged about 45 years, S/o KushalChand Dhadiwal, R/o P.C.M. Square, Near Nalghar Chowk, Raipur, Chhattisgarh.

Other address – Sachin Dhadiwal, S/o Kushal Chand Dhadiwal, through D.Dhadiwal Ply, Vijeta Complex, Shastri Bazar, Raipur, Chhattisgarh.

---Petitioner

Versus

Narayan Agrawal, Aged about 50 years, S/o Om Prakash Agrawal, Proprietor N.K. Construction, Borsi Colony, Durg, District Durg, Chhattisgarh.

--- Respondent

For Appellant : Mr. Pawan Kesharwani, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16/01/2020

1.Learned counsel for the petitioner would submit that in a prosecution lodged by the respondent in a private complaint for offence punishable under Sections 406, 420, 467, 468 and 471 of the IPC, though bailable warrants were issued against the petitioner, but they were never served to him and without considering that vide impugned order dated 27/10/2018, non-bailable warrant has been issued against the petitioner which is ex facie

illegal and bad in law in light of the decision rendered by the Supreme Court in the matter of Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.¹ and therefore, the impugned order deserves to be set aside.

2. I have heard learned counsel for the petitioner at length.

3. In the matter of Inder Mohan Goswami (supra) Their Lordships of the Supreme Court have held in unmistakable terms that issuance of non-bailable warrants actually interferes with personal liberty and therefore courts have to be extremely careful before issuing non-bailable warrant and laid down the principles, when non-bailable warrants should be issued which state as under :-

"Non-bailable warrants 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;

* the police authorities are unable to find the person to serve him with a summon;

* it is considered that the person could harm someone if not placed into custody immediately."

¹ (2007) 12 SCC 1

In the later part of judgment, Their Lordships cautioned the criminal court to refrain from issuing non-bailable warrant of arrest at first instance by directing as under :

"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."

Their Lordships while concluding, emphasized the need of striking proper balance between individual personal liberty and societal interest/interest of public before issuing warrant by making following pertinent observation:-

"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."

4. In the matter of Raghuvansh Dewanchand Bhasin v.

State of Maharashtra and another², it has been held that power and jurisdiction of court to issue appropriate warrant has to be exercised judiciously, striking a balance between the need of law enforcement on the one hand and the protection of citizen from highhandedness at the hands of the law enforcement agencies on the other. Paragraph of report states as under :

"Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter-alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of his absconding. (Also See: State of U.P. Vs. Poosu & Anr.)"

5. In the matter of Vikas v. State of Rajasthan³,

wherein the trial court while granting an

22012 (9) SCC 791

32014 (3) SCC 321

application under Section 319 of the Cr.P.C., directly issued non-bailable warrant for securing attendance of accused, which was affirmed by the High Court, setting aside order of trial court and High Court and emphasizing the need to secure the attendance of accused by first issuing summons/bailable warrant, Their Lordships of the Supreme Court held as under :-

".....This could be when firstly it is reasonable to believe that the person will not voluntarily appear in court; or secondly that the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 of the Cr.P.C. would extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case.

The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued....."

6. Bearing in mind the principles of law laid down by the Supreme Court in the above-stated cases (supra), it is quite vivid that though bailable warrants of arrest were issued against the petitioner but they were not served to him and yet, the trial Magistrate issued non-bailable

warrant of arrest against the petitioner by the impugned order which cannot be done without issuing and serving bailable warrant to the accused/petitioner at the first instance. Accordingly, the impugned order dated 27/10/2018 is hereby set aside. However, the petitioner will appear before the trial Magistrate on the next date of hearing failing which the trial Magistrate will have the power and jurisdiction to issue necessary process for securing petitioner's presence. It is made clear that this Court has not expressed any opinion on the merits of the matter or grant of bail, etc.

7. With the aforesaid direction, this petition under Section 482 of the Cr.P.C. finally stands disposed of. No cost(s).

8. A copy of this order be sent to the concerned trial Magistrate by e-mail/fax.

Sd/-
(Sanjay K. Agrawal)
Judge