

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 2777 of 2019**

Shishir Darshan Singh Baghel, S/o Shri H.D. Singh, aged about 45 years, working as accountant, R/o Govt. Dr. Manrakhan Lal Sahu College, Jamul, Tahsil and District Durg (C.G.)

----Applicant**Versus**

State of Chhattisgarh, through Police Station Durg, District Durg (C.G.)

---- Respondents

For Applicant	:	Mr. T.K. Jha, Advocate.
For Respondent /State	:	Mr. H.S. Ahluwalia, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****06/01/2020**

(1) Learned counsel appearing for the petitioner would submit that during the course of investigation, the petitioner was released on bail but after filing of the charge sheet, he was never served with the summons or bailable warrant of arrest and without serving bailable warrant of arrest, straightway non-bailable warrant has been issued against the petitioner, which is *ex facie*, illegal and bad in law, therefore, non-bailable warrant of arrest issued against the petitioner be set aside. He placed reliance upon the order of this Court dated 30.07.2018 passed in M.Cr.C. (A) No. 442 of 2018 (**Surendra Dubey Vs. State of Chhattisgarh & others**) in support of his submission.

(2) On the other hand, learned counsel for the State would submit that applicant was deliberately avoiding to appear before the trial Court on the date of appearance and, therefore, non-bailable warrant of arrest has been issued against him.

- (3) I have heard learned counsel appearing for the parties.
- (4) It appears from the record that up to 12.9.2017, the trial Magistrate directed for issuance of bailable warrant of arrest and straightway on 9.11.2018 without recording a finding that whether bailable warrant of arrest was served to the petitioner or not, non-bailable warrant of arrest was issued against the petitioner.
- (5) It is well settled that non-bailable warrant of arrest should be issued as a last resort, if accused does not appear after service of summons / bailable warrant.
- (6) In view of above, impugned order issuing non-bailable warrant of arrest against the petitioner is set aside. The trial Court is directed to immediately recall the non-bailable warrant of arrest issued against the petitioner and now, the petitioner will appear before the trial Magistrate on the next date of hearing.
- (7) The Cr.M.P. is allowed to the extent indicated hereinabove.
- (8) Copy of this order be served to the Judicial Magistrate First Class, Durg through FAX or E-mail today itself, who will immediately send the memo for recalling of the non-bailable warrant of arrest issued against the petitioner to the concerned police station through Superintendent of Police, Durg.
- (9) Counsel for the State is also directed to send the copy of this order to the Superintendent of Police, Durg for compliance and needful.

Certified copy, today.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

