



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14.07.2021

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC(MD)No.231 of 2021

Abdul Kubur

: Revision Petitioner/Petitioner/A21

Vs.

The State through
Deputy Superintendent of Police,
Alangulam Sub Division,
Pappakudi Police Station,
Tirunelveli District.
(Crime No.60 of 2013)

: Respondent/Respondent/Complainant

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure, against the order, dated 04.02.2021 made in Crl.MP No.188 of 2021 on the file of the 2nd Additional District Court (PCR), Tirunelveli.

For Petitioner

: Mr.C.Gangai Amaran

For Respondent

: Mr.P.Kottaichamy

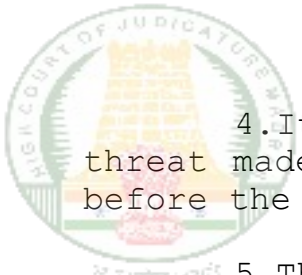
standing Counsel for
State (Crl. side)

O R D E R

This Criminal Revision is directed against the order, dated 04.02.2021 made in Crl.MP No.188 of 2021 on the file of the 2nd Additional District Court (PCR), Tirunelveli.

2.The petitioner is the accused in the case in SC No.152 of 2017 for the alleged commission of offence under sections 147, 148, 294(b) IPC and section 3 of the TNPPDL Act and also under section 3 (1)(x) of SC/ST (POA) Act. The case was committed by the Judicial Magistrate, Alangulam, for trial, to the Court of II Additional District and Sessions Judge, Tirunelveli. On 03.05.2019 when the case was posted for the appearance of the petitioner/accused, he did not appear and hence, the case was posted to 19.06.2019. On 19.06.2019, a petition under section 317 Cr.P.C was filed and the same was dismissed by the trial court and issued a Non-Bailable warrant against the petitioner. The petitioner filed Crl.M.P No.188 of 2021 in SC No.152 of 2019 seeking to recall the Non Bailable Warrant, on 04.02.2021. The said petition was dismissed on 04.02.2021. Hence, the petitioner is before this court.

3.Heard the learned counsel appearing on either side and perused the materials available on record.



4. It is the contention of the petitioner that due to the threat made by the creditors, it is not possible for him to appear before the court.

5. The Hon'ble Supreme Court in the case of **Inder Mohan Goswami Vs. State of Uttaranchal [(2007) 12 SCC 1]** has cautioned against the alacrity with which trial courts have issued NBW and issued detailed guidelines to be followed by trial courts when issuing NBW, which would run thus:-

When non-bailable warrants should be issued

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 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.



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 straitjacket 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.

15. It is seen from the Inder Mohan Goswami's case, that the guidelines stated therein, have been observed mostly in the breach by trial courts in Tamil Nadu. It is essential for the High Court, as the highest criminal Court and as a Court of supervision over all trial courts in the State, to reiterate these principles regarding issuance of Non Bailable Warrants and ensure compliance.

16. It is further seen that the cases in which trial courts issue Non Bailable Warrants may be broadly classified in four categories namely, (i) the trial court issues Non Bailable Warrants without issuing summons first, (ii) the trial court issues a Non Bailable Warrant when the accused is absent for one or two hearings without inquiring into the cause of absence, (iii) where the accused is absent for one or two hearings and files a petition under Section 317 of the Code, the Court rejects the petition and issues a Non Bailable Warrant and (iv) where the accused has intentionally absented himself from the trial and does not attend any hearings and then, the trial court issues a Non Bailable Warrant.

17. Among the aforesaid four categories, the first three categories of cases can be leniently considered by the High Court for the purpose of recalling a Non Bailable Warrant. Of course, such leniency could be to the subjective satisfaction of the reasonings of the petitioners as to the bona-fide inability to approach the lower Court seeking for recalling/cancellation of Non Bailable Warrant. Insofar as the fourth category is



concerned, it would not be desirable to recall the warrant but to direct the petitioner to approach the Court which had issued warrant, seeking for a prior relief.

18. It is also brought to my notice that apart from various other reasons for the long pendency of cases before the trial Courts, the non execution of Non Bailable Warrant is one among the reasons. This fact is reiterated through the last data collected by the NCRB. In most of these pending cases, it is seen that whenever a Non Bailable warrant is kept pending execution, the usual practice among many of the Court is to adjourn the case on the ground that "Non Bailable Warrant is pending".

19. In heinous crimes, where there is deliberate and continuous non appearance of the accused, the trial Court may proclaim him as person absconding under Section 82 of the Code of Criminal Procedure. Section 82 of the Code of Criminal Procedure reads as follows:

82. Proclamation for person absconding: (1) If Any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation

(2) The proclamation shall be published as follows—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of subsection (2), shall be



conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

[(4) Where a proclamation was duly published under sub-section (1) is in respect of a person accused of an offence punishable under Section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).] sub clause 4 & 5 inserted by Act 25 of 2005, S.12 (w.e.f.23.06.2006)."

20. Thus, under Section 82 of Cr.P.C., there can be no impediment on the part of the trial Court to pronounce him as a proclaimed offender, instead of keeping the matter pending indefinitely for the purpose of having the warrant executed. Hence, the existence of the fourth category of cases cannot be a ground to preclude the High Court to do justice in the first three categories particularly, when they constitute a major portion of the pending cases in the State of Tamil Nadu, in which, Non Bailable Warrants are pending execution.

21. To sum up the findings rendered by me, it is reiterated that the issuance of Bailable Warrant or Non Bailable Warrant should be exercised with extreme caution and in the rarest of cases, bearing in mind that the pendency of Non Bailable Warrant is one of the major factors for the long pendency of cases before the trial Court. The trial Court shall also scrupulously follow the guidelines imposed in Inder Mohan Gowsami's case (supra) as well as the observations made in the present case while issuing Non Bailable Warrants or recalling the Non Bailable Warrants."

6. In the case on hand, it is seen that the case was posted before the trial court for appearance of the petitioner, on 03.05.2019. On 03.05.2019, the petitioner was not present and the case was posted to 19.06.2019 for the appearance of the petitioner. But on that day, petition under section 317 Cr.P.C was filed and it was dismissed by the trial court and NBW was issued as against this petitioner. The petitioner stated that due to threat of the complainant, it is not possible for him to appear before the Court and for the threat by the complainant, he has not given any



complaint before the concerned police. The case is pending for a long time. Under these circumstances, this court feels that the warrant issued against the petitioner/accused can be recalled. Hence, the order of the trial court is liable to be set aside.

7. In view of that, this Criminal Revision is allowed. The impugned order of the trial court is set aside. The Non-Bailable Warrant issued, on 03.05.2019 is recalled. Consequently, the petitioner/accused is directed to appear before the II Additional District Judge (PCR), Tirunelveli, in connection with SC No.152 of 2019 within a period of two weeks from the date of receipt of this order and on subsequent hearing dates without fail.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1. The II Additional District Judge (PCR),
Tirunelveli.

2. The Deputy Superintendent of Police,
Alangulam Sub Division,
Pappakudi Police Station,
Tirunelveli District.

Crl.RC (MD) No.231 of 2021
14.07.2021

SSS (CO)

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