



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 19.10.2023

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Pronounced on : 29.11.2023

+ **CRL.M.C. 7683/2023**

VIJAY KUMAR AGARWAL

..... Petitioner

Through: Petitioner in-person.

versus

STATE (GOVERNMENT OF NCT OF DELHI) Respondent

Through: Mr. Raghuinder Verma, APP for the
State with SI Habib Khan, Crime
Branch.

**CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

JUDGMENT

RAJNISH BHATNAGAR, J.

CRL.M.A. 28613-14/2023

1. Exemption allowed, subject to all just exceptions.
2. The applications stand disposed of.

CRL.M.C. 7683/2023 AND CRL.M.A. 28615/2023

3. The present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 03.10.2023 passed by learned CMM, Karkardooma Courts, Delhi and the petitioner shall continue to be on the

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previous bail.

4. Petitioner who is appearing through video conferencing submits that the impugned order dated 03.10.2023 whereby the NBW was issued against the petitioner was passed in a routine and mechanical manner without assigning any reason. He further submits that the matter being CR Case No. 4387/2016 was listed for hearing on 03.10.2023 before the learned Trial Court but he could not appear before the learned Trial Court as his connected matter was listed for hearing before this Hon'ble Court wherein he was appearing in-person and therefore, he had sought an adjournment through an email informing that his matter is listed for hearing before this Hon'ble Court on the very same day but the learned Trial Court without taking into the consideration the same issued non bailable warrant against him. He further submits that the non-appearance of the petitioner was neither intentional nor deliberate and he had duly informed the court before hand by sending an official email.

5. The petitioner in support of his contentions has relied upon the following judgments :-

- *Satinder Kumar Antil vs. CBI [2023 LiveLaw SC 233]*
- *Inder Mohan Goswami & anr. vs. State of Uttaranchal & Ors. (Appeal (crl.) 1392 of 2007)*
- *Mani Shandley & Ors. vs. State & Ors. [MANU/DE/0627/2008]*
- *Sunil Tyagi vs. Govt. of NCT of Delhi (CRL.M.C. 5328/2013)*

6. Issue notice. Learned APP for the State appears on advance notice and accepts notice. He submits that one police witness, namely, Insp. Sanjay Bhatt was present on the said date, however, because of non-appearance of



the petitioner, the witness had to be sent back unexamined.

7. I have heard the petitioner and learned APP for the State and perused the records of the case.

8. The impugned order dated 03.10.2023 reads as follows:-

“Summons issued to PW ASI Ram Subhag received back with report that he passed away. Death certificate is on record. Accordingly, PW ASI Ram Subhag is dropped from list of witnesses.

Insp. Sanjay Bhatt present and discharged unexamined today.

Issue NBWs against the accused and notice u/s 446 Cr.PC to his surety for 05.12.2023.”

9. In ***Inder Mohan Goswami vs. State of Uttaranchal [(2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259]***, the Hon’ble Supreme Court discussed the issue as to how and when warrants should be issued by the Court. The relevant paras reads as follows:

"Before parting with this appeal, we would like to discuss an issue which is of great public importance, i.e., how and when warrants should be issued by the Court? It has come to our notice that in many cases that bailable and non-bailable warrants are issued casually and mechanically. In the instant case, the court without properly comprehending the nature of controversy involved and without exhausting the available remedies issued non-bailable warrants. The trial court disregarded the settled legal position clearly enumerated in the following two cases.

In Omwati v. State of UP & Another (2004) 4 SCC 425, this court dealt with a rather unusual matter wherein the High Court firstly issued bailable warrants against the appellant and thereafter by issuing non-bailable warrants put the complainant of the case behind bars without going through the facts of the case. This Court



observed that the unfortunate sequel of such unmindful orders has been that the appellant was taken into custody and had to remain in jail for a few days, but without any justification whatsoever. She suffered because facts of the case were not considered in proper perspective before passing the orders. The court also observed that some degree of care is supposed to be taken before issuing warrants.

In State of U.P. v. Poosu & Another (1976) 3 SCC 1 at para 13 page 5, the Court observed:

Whether in the circumstances of the case, the attendance of the accused respondent can be best secured by issuing a bailable warrant or non bailable warrant, is a matter which rests entirely in the discretion of the court. Although, the discretion is exercised judiciously, it is not possible to computerize and reduce into immutable formulae the diverse considerations on the basis of which this discretion is exercised. Broadly speaking, the court would take into account the various factors such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and the State.

Personal liberty and the interest of the State

Civilized countries have recognized that liberty is the most precious of all the human rights. The American Declaration of Independence 1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights 1966 all speak with one voice - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law.

The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.



Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilized society. Sometimes in the larger interest of the Public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued

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.*

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.

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.

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.

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."

10. In ***Naresh kumar vs. State (Crl. M.C. No. 5047 of 2006)***, it was observed and held as follows:

"One has to bear in mind the provisions of Rule 3 of Chapter 1, part-C(i) in Part III of Delhi High Court Rules which reads as under: -

"Rule 3. Warrant should not be issued unless absolutely necessary- Great care should be taken not to issue a warrant when a summon should be sufficient for the ends of justice. Magistrate should remember that the issue of a warrant involves interference with the personal liberty of a person and should take care to see that no greater hardship is caused than is necessary. Under Section 76 of the Code (now Section 71 of new Code) a Court has the discretion to make the warrant bailable, and this discretion should be exercised with due regard to the nature of the offence, the position of the accused person and the circumstances of the case."

5. *The Trial Courts are, therefore, not supposed to take extreme steps while issuing non-bailable warrants on the very first call and in the pre-lunch hours. In spite of the aforesaid rule and reiterating of the*



*legal position by this Court in the case of **Puneet Singh Chauhan & Anr. v.. State, 107 (2003) DLT 220**, wherein it is observed that the Trial Courts are acting contrary to the aforesaid mandate of law. Such orders are passed indiscriminately and number of cases are coming up to this Court.*

6. No doubt, if an accused tries to evade the process of law or intentionally delays the proceedings, the Magistrate has the power to issue non-bailable warrants. Such a power is not, however, to be exercised only in those circumstances and not lightly and not in terrorem."

11. In the instant case, perusal of the order dated 03.10.2023 shows that one prosecution witness, namely, Inspector Sanjay Bhatt was present on the said date for his examination but he could not be examined because of non-appearance of the petitioner. Thereafter, non-bailable warrant was issued by the learned CMM, Karkardooma Courts, Delhi against the accused-petitioner.

12. The bonafides of the petitioner are reflected from the fact that the petitioner had sought an adjournment through an email dated 29.09.2023 in the Trial Court on the ground that one matter of the petitioner being **Contempt Case (C) No. 745 of 2023 titled Vijay Kumar Agarwal vs. Shri Arun Sukhija** was listed for hearing before this Court wherein he was to appear in person and thus, the petitioner had requested for an adjournment before the Trial Court which was not considered by the Trial Court while issuing non-bailable warrant against the petitioner. As far as the presence of one police official was concerned, no doubt he was sent unexamined by the Trial Court, but the Trial Court should not have issued NBW against the petitioner in a routine manner. Furthermore, the impugned order is bereft of



any details as to whether the petitioner was called in the pre-lunch hours or post-lunch and whether the petitioner was called multiple times before issuance of NBW against him. Moreover, there is nothing in the impugned order to show that the petitioner is guilty of such conduct on previous occasions as well. Therefore, keeping in view the totality of facts and circumstances of this case, the impugned order dated 03.10.2023 cannot be sustained and is accordingly, set aside and the petitioner shall continue to remain on the previous bail.

13. The petition along with pending application stands disposed of in view of the aforesaid terms.

RAJNISH BHATNAGAR, J

NOVEMBER 29, 2023/ib