



Judgment

Cr.WP-790-791-2025

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 790 OF 2025

...

Abhijeet S/o Manoj Jayaswal,
Aged about 45 years, Occ: Business,
R/o. Shivlok, 801 B-Wing, J.P. Height,
Byramji Town, Jaripatka Nagpur.

...

PETITIONER

- - V E R S U S - -

The Central Bureau of Investigation,
Through its Inspector of Police,
CBI, EOB, Kolkata.

...

RESPONDENT

WITH

CRIMINAL WRIT PETITION NO. 791 OF 2025

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PETITIONER

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The Central Bureau of Investigation,
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CBI, EOB, Kolkata.

... **RESPONDENT**

Mr. Devendra V. Chauhan, Senior Advocate assisted by Mr. C.J.
Dhruv and Mr. C.S. Dhore, Advocate for the Petitioners.
Mr. P.K. Sathianathan, Advocate for the Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : NOVEMBER 19, 2025.

COMMON JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
with the consent of learned counsel for both the parties.

2. The order dated 18/09/2025 is under challenge,
whereby a non-bailable warrant was issued against the present
petitioners by the learned Special Judge, C.B.I. Court, Nagpur.

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3. Shri Chauhan, the learned senior counsel appearing for the petitioners submits that Section 73 of the Code of Criminal Procedure, 1973, has not been complied with while issuing non-bailable warrant, as the petitioners were neither named as accused in the First Information Report nor at any subsequent stage they been made accused, then also, the Court below issued a non-bailable warrant by stating “*Hence, issue NBW against the accused.*” He submits in order to attract Section 73 Cr.P.C., three contingencies are provided and unless one of these contingencies is satisfied, a non-bailable warrant cannot be issued, the three contingencies are if a person is a escaped convict, or proclaimed offender or is accused of a non-bailable offence and is evading arrest. It was submitted that insofar as the initial two categories are concerned, those are out of question and even under the third category the petitioners do not fall as they are neither named as accused in the FIR, nor made accused at any subsequent stage. Accordingly, he submits that there was no material before the Court below to justify

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issuance of a non-bailable warrant and the impugned order is passed without application of mind. He further submits that the petitioners received the notices issued under Section 160 Cr.P.C. By that notices the petitioners were called for enquiry / investigation, petitioners have replied promptly to those notices. Even in the application filed by the C.B.I. under Section 73 Cr.P.C., there is no reference to the replies submitted by the petitioners. Therefore, he submits that the Court below has passed the impugned order mechanically. Lastly, he prayed that the said order be quashed and set aside.

4. On the other hand, Shri Sathianathan, the learned counsel appearing for the respondent vehemently submits that the petitioners are accused persons and they have been called for interrogation repeatedly, however, they have not co-operated with the Investigating Agency. Though the petitioners received notices under Section 160 Cr.P.C. and filed their replies to the said notices by assuring that they would appear,

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but they failed to appear on any of the scheduled dates. Therefore, the respondent-C.B.I. was constrained to file the application under Section 73 of the Cr.P.C. The Court below was justified in issuing a non-bailable warrant, as after perusal of the case diary, the order of non-bailable warrant was issued. He further submits that, there is satisfaction of the third contingency which is provided under Section 73 Cr.P.C. as the petitioners are accused of non-bailable offence and are evading arrest. The petitioners have deputed security guards to prevent entry into the house, despite the petitioners being available inside the house and the officers of C.B.I. have not been permitted to enter into the house of petitioners. Accordingly, he prayed that there is no merit in the petition and the same be dismissed.

5. Upon hearing both the counsels at length, it appears that the mandate of Section 73 requires consideration in the present case, and therefore, it is necessary to reproduce the

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same. Section 73 of Cr.P.C. is reproduced below:-

“73. Warrant may be directed to any person

(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71. ”

It appears from Section 73 that the Magistrate may issue warrant to any person within his local jurisdiction for the arrest of any escaped convict, or proclaimed offender, or any

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person who is accused of a non-bailable offence and is evading arrest. Now so far as the present case is concerned, the petitioners are neither escaped convicts, nor they are proclaimed offenders. Therefore, the only question to be considered is whether they fall within the third category, i.e., person accused of a non-bailable offence and is evading arrest.

6. After perusal of the record, it appears that there are certain allegations against the petitioners, however, while passing the impugned order dated 18/09/2025, the Court has observed - *“Hence, issue non-bailable warrant against the accused.”* Now, let us come to another order which is passed on 24/09/2025 in respect of both the petitioners by the same Special Judge, CBI Court, Nagpur, wherein it was observed that *“For the ends of justice and till the date, present applicant has not named as an accused but not co-operated for the investigation, with directions to the applicant to remain present before the Court on 26/09/2025 at 2:45 p.m., NBW order has*

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kept in abeyance till 26/09/2025.” Therefore, the same Court has passed both orders wherein in the impugned order the petitioners have been shown as accused persons, however, in the subsequent order, the same Court has expressed that they have not been named as accused. This fact itself demonstrates whether the Court has satisfied itself in order to issue non-bailable warrant against the petitioners as accused or they have only been called for the purpose of investigation. The Court below cannot blow hot and cold as at one hand the petitioners are shown as accused and on the other hand the court is observing that they have not been named as accused. The Court should be of firm view that they are accused persons and evading arrest, before issuing non-bailable warrant for arrest of the accused persons.

7. The issuance of warrants involve interference with personal liberty which is the natural and inalienable right of every human being guaranteed by Article 21 of the Constitution

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of India. It is trite that the discretion of the Court to issue non-bailable warrant should be exercised judiciously and sparingly with circumspection and not in a routine manner. Court should arrive at its objective satisfaction by properly balancing the personal liberty of such person and societal interest. The Supreme Court in the case of *State Through CBI VS Dawood Ibrahim Kaskar and Others*, (2000) 10 SCC 438, has held that *“the warrant can be issued for appearance before the Court only and not before the Investigating Agency and authorization for detention is neither to be given as a matter of course, nor on the mere asking of the Investigating Agency, but only after exercise of judicial discretion based on materials placed.”* Further, the Apex Court in other cases has laid down that a non-bailable warrant should be issued to bring a person to Court when summons or bailable warrants should be unlikely to have the desired result and the same can be issued under following circumstances:-

- 1] It is reasonable to believe that the person will

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not voluntarily appear before the Court;

2] The Police Authorities are unable to find the person to serve him with the summon and;

3] If it is considered that the person would harm someone if not placed into custody immediately.

8. Upon perusal of the case papers, though there are allegations against the petitioners, the question still remains as to what precluded the C.B.I. from exercising their powers under the Cr.P.C. / BNSS as the FIR was registered in 2023. The dilemma continues, if a person who has not been named as an accused and who has been served a notice under Section 160 Cr.P.C. to attend the office of the Investigating Agency as a witness, then I fail to understand how that person can evade arrest when there was no apprehension of arrest. Perusal of the impugned order would demonstrate that it was issued without proper application of mind and the Court itself is doubtful about the status of the present petitioners as accused persons.

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Further, evading arrest is one another important ingredient to be considered before issuance of non-bailable warrant, as was argued by the learned counsel for CBI and reflected in the memorandum that the security guards were deputed by the petitioners and they were not permitted to enter into the house. No doubt, evading arrest is an obstacle to justice, however, record does not show that the respondent officers went to the house of petitioners for arresting them. On the contrary, respondents issued notices under Section 160 Cr.P.C. one after another which were served and petitioners have also filed their replies to all those notices and shown willingness to co-operate in the investigation, therefore, under such circumstances it cannot be said that the petitioners were evading arrest.

9. Therefore, learned Special Judge, C.B.I. Court, Nagpur, failed to consider the mandate of Section 73 and mechanically and in cryptic manner passed the impugned order. Therefore, considering the above facts and circumstances, I am

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inclined to allow the petition. Hence, the following order:-

ORDER

(i) Both the Criminal Writ Petitions are
allowed;

(ii) The impugned orders dated 18/09/2025
passed by the learned Special Judge, CBI Court,
Nagpur, is quashed and set aside.

10. Needless to mention at this juncture that the observations made in the above order are *prima facie* and restricted to the present petition only, however, no Court shall be influenced by the observations made in the present common judgment and order. Rule is made absolute in above terms.

[**M. M. NERLIKAR, J**]