



Crl.O.P.No.11321 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.11321 of 2025

Dr.Bhupat Haribhai Desai Petitioner

Vs

The State
represented by Inspector of Police,
Cyber Crime Wing,
Avadi Police Commissionerate,
Ambattur, Chennai – 600 053. Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to pass an order recalling the non bailable warrant issued against the petitioner/4th accused in C.C.No.330 of 2024 vide adjudication dated 30.10.2024 pending before the learned Judicial Magistrate No.I, Poonamallee, Chennai, which was splitted and pending in c.C.No.23 of 2025 pending before the learned Judicial Magistrate No.I, Poonamallee, Chennai and to set the petitioner at liberty.

For Petitioner : Mr.G.Prabhakaran

For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)

For Defacto Complainant : Mr.K.R.Hariharan



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ORDER

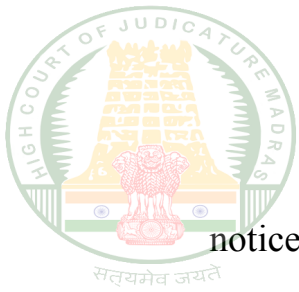
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This Criminal Original Petition has been filed challenging the Non-Bailable Warrant issued as against the petitioner, who is arrayed as A4 in C.C.No.330 of 2024, dated 30.10.2024, on the file of the Judicial Magistrate No.I, Poonamallee, Chennai.

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

3. The petitioner is arrayed as A4 in C.C.No.330 of 2024 on the file of the Judicial Magistrate No.I, Poonamallee, Chennai. The said case was later split and renumbered as C.C.No.23 of 2025. Pending trial, the petitioner failed to appear before the Trial Court and as such, the Trial Court issued a Non-Bailable Warrant as against him. Pursuant to the said warrant, a Lookout Circular was issued and the petitioner was subsequently arrested and remanded to judicial custody.

4. Thereafter, the petitioner filed an application seeking bail and the same was dismissed. The present petition challenges the very issuance of the Non-Bailable Warrant, on the ground that no summons or



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notice had been duly served on the petitioner prior to the issuance of the warrant. In fact, the petitioner was served with a notice under Section 41A of Cr.P.C for enquiry. The charge sheet does not indicate that the petitioner was absconding or failed to respond to the said notice issued under Section 41(A) of Cr.P.C. He also relied upon the provision under Section 90 of BNSS, 2023, on what circumstances the Non-Bailable Warrant can be issued as against the petitioner.

5. In support of his contention, the learned counsel for the petitioner also relied upon the Judgment of this Court in Crl.O.P.No.6235 of 2022 dated 24.03.2022, wherein this Court held that without any requirement, the Trial Court cannot be issued Non-Bailable Warrant. He also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2024 LiveLaw (SC) 337** in the case of ***Sharif Ahmed and another Vs. State of Uttar Pradesh and another***, wherein the Hon'ble Supreme Court of India held that Non-Bailable Warrant cannot be issued in a routine manner and that the liberty of an individual cannot be curtailed unless necessitated by the larger interest of public and the State. While there are no comprehensive set of guidelines for the issuance of Non-Bailable Warrants, the Hon'ble Supreme Court of India has observed



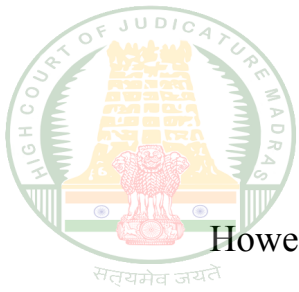
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on several occasions that Non-Bailable Warrants should not be issued, unless the accused is charged with a heinous crime and is likely to evade the process of law or tamper/destroy evidence.

6. The learned Government Advocate (Crl.Side) appearing for the first respondent submitted that the petitioner is arrayed as A4 and is facing charges for the offences punishable under Section 406, 420 r/w 109, 120, 201 of IPC and 66, 66(B), 72, 72A of IT Act. It is alleged that the defacto complainant was engaged in the business of providing medical billing services to the overseas medical institutions, and that the first and second accused, who were employees of the defacto complainant company, had resigned from service on 31.01.2023 and thereafter started a Company providing similar services under a deceptively similar name. During their tenure with the defacto complainant company, it is alleged that they had tampered with the company's data and transferred the same to their personal e-mail.

7. In the complaint, the petitioner herein is shown as one of the Directors of the said company. After registration of the FIR, the petitioner was duly served with a notice under Section 41A of Cr.P.C.



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However, on receipt of the said notice, the petitioner failed to appear for the enquiry.

8. A perusal of the final report also reveals that the petitioner was served with a notice under Section 41A of Cr.P.C. However, the petitioner failed to appear for the enquiry. Even after cognizance was taken in C.C.No.330 of 2024, the Trial Court issued summons and the same was also duly served on the petitioner through Whatsapp and e-mail. Despite such service, the petitioner failed to appear before the Trial Court. That apart, the petitioner committed a very serious offence. Therefore, the Trial Court rightly issued a Non-Bailable Warrant as against the petitioner for his non-appearance after due service of summons. In fact, the petitioner also failed to comply with the notice issued under Section 41A of Cr.P.C. Pursuant to the issuance of the warrant, a Lookout Circular was issued and the same was duly executed by the respondent when the petitioner entered India. Thereafter, the petitioner was remanded to judicial custody and his bail application was dismissed. Therefore, the above Judgment cited by the learned counsel for the petitioner was not applicable to the case on hand.



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9. In view of the above, this Court finds no infirmity or

illegality in the issuance of the Non-Bailable Warrant in C.C.No.330 of 2024 dated 30.10.2024 by the Judicial Magistrate No.I, Poonamallee, Chennai as against the petitioner. Accordingly, this Criminal Original Petition stands dismissed.

15.04.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
Lpp

To

1.The Judicial Magistrate No.I,
Poonamallee, Chennai.

2. The Inspector of Police,
Cyber Crime Wing,
Avadi Police Commissionerate,
Ambattur, Chennai – 600 053.

3. The Public Prosecutor,
Madras High Court, Chennai.

G.K.ILANTHIRAIYAN, J.



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