



Crl.R.C.No.1172 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 05.08.2025

Coram:

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.No.1172 of 2025 &
Crl.M.P.No.14315 of 2025

1. Ramu @Kothandaraman
2. Elavarasi

...Petitioners

Vs.

The State rep. By
The Inspector of Police
Auroville Police Station,
Villupuram

...Respondent

Prayer:

Criminal Revision filed under Section 438 r/w Section 442 of BNSS, 2023 as against the order of the learned Judicial Magistrate, Vanur in PRC No.19 of 2024 (Old PRC No.31 of 2019 & PRC No.35 of 2023) and consequentially allow the revision filed by the petitioners under Section 70(2) of BNSS, 2023 and recall NBW issued against the petitioners on 13.07.2025.

For Petitioners : Mr.N.Manokaran for
Mr.Prakash Adiapadam

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



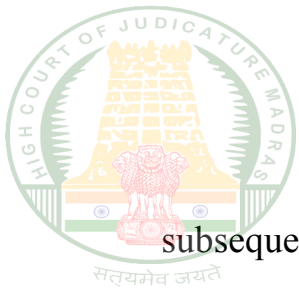
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ORDER

WEB COPY This Criminal Revision has been preferred as against the order passed in P.R.C. No.19 of 2024 dated 19.06.2025 on the file of the Judicial Magistrate, Vanur, thereby dismissing the petition filed under Section 72(2) of BNSS Act to recall the non-bailable warrant.

2. Heard the learned counsel on either side and perused the documents placed on record.

3. The petitioners are arrayed as A.1 and A.2 in Crime No.419 of 2018 registered for offences punishable under Sections 147, 148, 341 and 302 of IPC and Section 3(b) of Explosive Substances Act, 1908. After completion of investigation, the respondent filed a final report showing the petitioners as absconding accused and altered case into Sections 147, 148, 341, 302, 149, 120B IPC r/w Section 3, 4(a), 4(b) & 6 of Explosive Substances Act on 23.10.2018. Totally there are 14 accused involved in this case and on receipt of the final report, the same has been taken on the file of the learned Judicial Magistrate Vanur in P.R.C.No.31 of 2019. Since the petitioners and A.7 were absent, the case has been split up into P.R.C.No. 35 of 2023, subsequently A.7 appeared and recalled Non-bailable warrant. Further, the case against the petitioners were split up and taken on file in PRC No.19 of 2024 and



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subsequently, case in PRC No.31 of 2019 and 35 of 2023 were clubbed together and committed to Sessions Court and the same has been taken on file in S.C.No.345 of 2023. Now the case is pending for committal as against the petitioners in PRC No.19 of 2024. On perusal of the records it reveals that while the case is pending in PRC No.35 of 2023, the learned Magistrate issued non-bailable warrant as against A.1, A.2 and A.7, though they were absconding and absconding charge sheet has been filed as against the said accused persons, they were not issued summons and straight away, the trial court has issued non-bailable warrant as against petitioners / A.1 and A.2. As against the same, the petitioners have come up with present revision.

4. The case of the petitioners are that they have been impleaded as accused only on the basis of the confession statement of the co-accused and they did not have any knowledge about the case. Though they had been in India 20 days prior to the date of alleged occurrence, subsequently, they had left India to reach the United States of America and if any summons have been issued, they would have definitely appeared before the trial court and they have absolutely no intention to abscond from any proceedings against them. After it came to the knowledge about the pendency of the criminal case, the petitioners filed petition in Crl.O.P.No.10850 of 2025 to quash the final report no.1200 of



2018. Though this Court initially granted interim stay by order dated 08.04.2025, subsequently, it was brought to the notice of this Court that already non-bailable warrant was issued against the petitioners and it is pending. Therefore, after knowing the pendency of the non-bailable warrant against them, the petitioners had withdrawn the quash petition with liberty to file a petition to recall the warrant pending against them. Therefore, the petitioners filed a petition to recall the Non-bailable warrant against them before the learned magistrate. The learned Magistrate, without even numbering the petition mechanically dismissed the said petition indicating that 'considering the age of the case which is pending since 2018, the gravity of the offence and their likelihood of absconding would stall the judicial proceedings'. As against the same, the petitioners have come up with the present petition.

5. It is pertinent to point out that already the respondent filed absconding charge sheet as against the petitioners, only because of that, the trial court had split up the case as against the petitioners and committed the case insofar as other accused persons. It is pending for trial before the trial court in S.C. No.345 of 2023 without even verifying these details, the trial court mechanically dismissed the petition to recall non-bailable warrant. In fact, the petitioners also did not appear before the trial court to recall the non-bailable



warrant. It seems that without the petitioners absconding, they filed a

petition to recall the non-bailable warrant. It shows that the trial court had absolutely no knowledge about the pendency of the criminal case, since they were not issued summons even after filing absconding chargesheet, therefore, the learned Magistrate, ought not to have issued non-bailable warrant directly without even issuing any summons to the accused. In this regard, the **Hon'ble Supreme Court of India in Inder Mohan Gowsami vs. Utranchal and others 2007 12 SCC at Paragraph No.53 to 57**, held as follows:-

“53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have 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



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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 restored to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrant.

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”



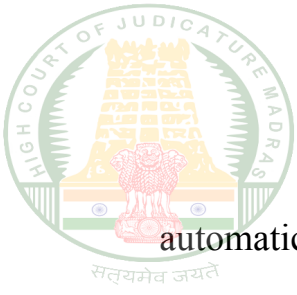
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The above judgment squarely applies to the case on hand, since the Magistrate

had not issued any summons to the petitioners. If the summons were served on the accused and thereafter, they failed to appear or evade the serving of summons, then, the learned magistrate can issue non-bailable warrant. As stated supra, in the case on hand, the learned magistrate failed to issue any summons and directly issued non-bailable warrant.

6. In view of the above, the order passed by the learned Judicial Magistrate, Vanur on 19.06.2025 in PRC No.19 of 2024 [old PRC No.31 of 2019 and PRC NO.35 OF 2023] is set aside. Consequently, the look out circular issued as against the petitioners dated 24.03.2025 and red corner notice request issued to interpol on 25.04.2025 also cannot be sustained and liable to be set aside and accordingly, the same are set aside.

In the result, the order passed in P.R.C.No.19 of 2024 dated 19.06.2025 is set aside and the present Revision is allowed. The petitioners shall appear before the learned Judicial Magistrate, Vanur on or before 15.09.2025 and on their appearance, the learned Judicial Magistrate, Vanur is directed to complete the committal proceedings after serving the notice as contemplated under Section 207 of Cr.P.C., and if the petitioners fail to appear on or before 15.09.2025, the look out circular and the red corner notice shall stand



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automatically restored and the respondent is at liberty to proceed as against the

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petitioners in accordance with law. Consequently, connected miscellaneous petition is closed.

05.08.2025

Index : Yes / No

Internet : Yes / No

Speaking Order / Non Speaking Order
ssd

To

1. The learned Judicial Magistrate, Vanur

2.The Inspector of Police, Auroville Police Station, Villupuram

3. The Public Prosecutor, High court, Madras

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G.K.ILANTHIRAIYAN, J.

ssd

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