

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18419 of 2021

Arising Out of PS. Case No.-169 Year-2017 Thana- SANDESH District- Bhojpur

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1. Hira Singh Son Of Late Bifen Singh Resident Of Village - Saraiya, P.S.- Sandesh, Distt.- Bhojpur.
 2. Manu Devi W/O Hira Singh Resident Of Village - Saraiya, P.S.- Sandesh, Distt.- Bhojpur.
 3. Vicky Singh Son Of Hira Singh Resident Of Village - Saraiya, P.S.- Sandesh, Distt.- Bhojpur.
 4. Pramod Kumar Son Of Hira Singh Resident Of Village - Saraiya, P.S.- Sandesh, Distt.- Bhojpur.
 5. Akash Singh Son Of Hira Singh Resident Of Village - Saraiya, P.S.- Sandesh, Distt.- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. SAVITA DEVI W/o Jai Prakash Saw Resident of Village - Saraiya, P.S.- Sandesh, Distt.- Bhojpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashhar Mustafa, Adv. Mr. Vikash Kumar, Adv. Mrs. Anita Kumari, Adv Mr. Sudhanshu Bhushan, Adv.
For the Informant		Mr. Shiv Prasad Gupta, Adv.
For the State		Mr. Ram Priya Sharan Singh, APP.

CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL ORDER

4 07-01-2026 Heard learned counsel for the petitioners, learned counsel for the opposite party no. 2 and learned APP for the State.

2. The present application has been filed for quashing of the order dated 03.01.2020 passed by the learned District and Sessions Judge, Bhojpur (Ara) in Cr. Revision No. 110 of 2019 as also the order dated 17.06.2019 passed by the learned Judicial



Magistrate, 1st Class in connection with Sandesh P.S. Case No. 69 of 2017, whereby and whereunder the learned Magistrate has ordered to issue non-bailable warrant of arrest against the petitioners.

3. The background of the case is that initially the FIR was lodged under Sections 341, 323, 325, 504/34 of the Indian Penal Code against the present petitioners on 01.11.2017 and the petitioners were granted the privilege of bail by an order dated 14.11.2017. The victim/injured of the case died during the course of treatment on 19.12.2017 and subsequently after investigation, charge-sheet was submitted by adding Section 302 of the IPC whereafter cognizance was also taken by an order dated 09.04.2019 under Sections 341, 323, 325, 302, 504/34 of the IPC in the case and the cognizance order would show that directly bailable warrants have been ordered to be issued against all the accused persons. The order-sheet which has been brought on record would further indicate that on the next date i.e. on 25.05.2019, the execution report of the bailable warrant was awaited and a further date of 17.06.2019 was given for appearance and subsequently on 17.06.2019, non-bailable warrants were issued against the petitioners.

4. The submission made on behalf of the learned



counsel for the petitioners is two fold-one being that despite the fact that the petitioners were on bail by an order dated 14.11.2017 and never misused the privilege of bail and their bail bonds never having been cancelled, yet,ailable and non-ailable warrants were issued against the petitioners for which there was no occasion an is hence, per se, illegal. The second contention raised on behalf of the petitioners is that the order dated 17.06.2019 issuing non-ailable warrant against the petitioners was passed in absence of any report of the execution of the earlier order of issuance of aailable warrants which would be clearly evident from a perusal of the order-sheet of the court of the learned Judicial Magistrate 1st class, Ara (Bhojpur).

5. Learned counsel for the opposite party no. 2, per contra, submits that the Magistrate is within his jurisdiction to issue a warrant for causing the accused to be brought or to appear at a certain time before the Magistrate and he makes a reference to Section 204 (b) of Cr.P.C. laying down such law. In such view of the matter, it has been submitted that no illegality has been committed by either the learned court of the Magistrate or the Revisional Court in issuance of non-ailable warrants and by upholding the said order of issuance of the non-ailable warrant.



6. It is a settled position of law that the issuance of non-bailable warrants involves interference with personal liberty and the courts have to be extremely careful before issuing non-bailable warrants as they amount to deprivation of most precious right of an individual. Therefore, as far as possible, in case the summons can suffice getting the appearance of the accused before the Court, the same ought to be preferred instead of issuance of warrants as it has been clearly held in the case of **Inder Mohan Goswami Vs. State of Uttaranchal reported in (2008) 1 SCC (Cri) 259** and in the case of **R.D. Bhasin Vs. State of Maharashtra reported in 2012 (9) SCC 791** that issuance of warrants have extremely serious consequences and ramifications and hence, courts must be very careful in the issuance of the same. This Court is further of the view that when the petitioners of this case were already enjoying the privilege of bail and their bail bonds had never been cancelled, there was never any occasion of issuance of warrants and thus, I do not find any force in the submission of the learned counsel for the opposite party no. 2 stating that the Magistrate concerned was well within his jurisdiction to issue warrants. The issuance of warrants would depend on the facts and circumstances of a case and such discretion with regard to issuance of warrant or a



summon has to be exercised judiciously. In any view of the matter, in the facts of the present case, there is no question of exercising such discretion as the petitioners were already enjoying the privilege of bail, had never misused the said privilege and also in the particular condition when their bail bonds were never cancelled, as such, issuance of warrants do not have any legal justification.

7. Taking all these facts and circumstances into consideration, this Court is of the view that the impugned orders dated 17.06.2019 and 03.01.2020 cannot be legally sustained and are fit to be set aside.

8. Accordingly, the present application for quashing is allowed.

(Soni Shrivastava, J)

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