



Judgment

wp888.25

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

CRIMINAL WRIT PETITION No.888 OF 2025.

Uday s/o Chandrashekhar Balapure,
Age 61 years, Occupation Nil,
resident of B-803, "Albacitta", Pan Card
Cub Road, Near Vasant Vihar
Society, Baner, Pune-411 045.

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PETITIONER.

VERSUS

Kuber Corporation,
A Partnership Firm, through its
Partner Satyanarayan Gokulchandji Zawar,
Age 57 years, Occupation Business,
resident of Sarafa Bazar Akola,
Taluq and District Akola.

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RESPONDENT.

Mr. U.S. Malte, Advocate for the Petitioner.
None for the Respondent - Served.

CORAM : M.M. NERLIKAR, J.

DATE : APRIL 22, 2026.

Rgd.

ORAL JUDGMENT :

Heard learned Counsel for the petitioner. Though the respondent is served, and inspite of giving opportunity to appear, none appears for him. Hence, the matter is taken up for final hearing and disposal.

Rule. Rule is made returnable forthwith.

2. By the present Writ Petition the petitioner is challenging the order dated 18.10.2025 passed below Exh. 38 and order dated 20.10.2025 passed below Exh.41 passed by the Judicial Magistrate First Class, Akola in S.C.C.No 1204/2023 wherein the application filed by the petitioner for cancellation of bailable warrant was rejected by the trial Court.

3. The proceedings relate to Section 138 of the Negotiable Instruments Act. The learned Counsel for the petitioner submits that the petitioner was granted exemption vide order dated 11.03.2024, and the Court has permitted the petitioner to remain present as and when the Court directs. My attention is invited to the copy of Rgd.

3

roznama dated 30.08.2025, wherein an application at Exh.35 was filed by the petitioner and say was called. Next date was 19.09.2025. On 19.09.2025 the case was adjourned to 29.09.2025 for further hearing and orders on Exh.35. On 29.09.2025 again the case was adjourned to 18.10.2025 for orders on Exh.35. The learned Counsel for the petitioner submits that even for passing orders on Exh.35, presence of the petitioner/original accused was not necessary. However, on 18.10.2025 abruptly an application was filed on behalf of the complainant for issuance of nonailable warrant, as the petitioner/ accused was absent and the trial Court has issuedailable warrant in the sum of Rs.5000/- against the accused on the very same day.

4. The petitioner has filed an application on 20.10.2025 for cancellation and recall of warrant issued on 18.10.2025. It is submitted that the said application came to be rejected by the learned Magistrate on the very same day stating that no valid reason was assigned. It is this order which is subject matter of challenge in this petition.

Rgd.

5. I have considered the contentions canvassed by the learned Counsel for the petitioner. Issuance of warrant, bailable or non-bailable is serious, as it relates to curtailing personal liberty of a person, and therefore, there should be sound and reasonable grounds for issuance of such warrants. The Court should take every precaution and care prior to issuance of either bailable or non-bailable warrant and it should be issued as a last resort. From the proceedings, admittedly it appears that by order 11.03.2024, the petitioner /original accused was granted exemption and was to be present only when called upon by the Court. It further appears from the proceedings and roznama that the case was pending for passing orders on Exh.35 and, therefore, it was not necessary for the petitioner to remain present in person. The Advocate for the petitioner was promptly attending the case, which could be gathered from the contents of roznama dated 30.08.2025, 19.09.2025 and 29.09.2025. In such circumstances, there was no reason for the Court to call upon the petitioner /accused to remain present on 18.10.2025, when the

case was listed for orders on Exh.35.

6. The complainant has filed an application for issuance of non-bailable warrant against the accused, and the trial Court on the very same day i.e. 18.10.2025 has issued bailable warrant in the sum of Rs.5000/-, without considering the earlier order dated 11.03.2024. Had it been a case that the petitioner / original accused or his Advocate were not attending the Court and in that event the order could have been passed. However, it is to be noted that when the application was made on 20.10.2025 i.e. immediately after two days for cancellation and recall of the order of issuance of warrant dated 18.10.2025, the Court ought to have cancelled the said warrant, however, the said application came to be rejected stating that there are no valid reasons assigned by the petitioner to cancel the bailable warrant. Infact, after perusal of the application filed by the petitioner, it appears from the averments made in the said application (Exh.41), in which reasons are assigned, which ought to have been accepted by the trial Court. From perusal of the averments made in the application at Exh.41, in my opinion, sufficient cause has been shown

Rgd.

by the petitioner for his absence on 18.10.2025, therefore the Court below ought to have accepted the said reason.

7. As stated earlier, issuance of warrant bailable or non-bailable is a serious matter, and it affects the personal liberty of a person, therefore, the Court ought to have taken due care and caution before issuing such warrant. Here the trial Court has failed to consider the earlier order dated 11.03.2024. It is to be mentioned that the matter was kept for passing order on Exh.35, but, it is not clear from the roznama or the order impugned as to why the presence of the petitioner was necessary. In such circumstances, the impugned order does not sustain in law and deserves to be quashed and set aside. Hence, the following order.

ORDER

- (i) Criminal Writ Petition is allowed and disposed of.
- (ii) The order dated 18.10.2025 passed below Exh. 38 and order dated 20.10.2025 passed below Exh.41 passed by

Rgd.

the Judicial Magistrate First Class, Akola in S.C.C.No 1204/2023 are hereby quashed and set aside.

(iii) Rule is made absolute in aforesaid terms.

JUDGE