

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Criminal Case (A) No.442 of 2018

Surendra Dubey, S/o Gend Ram Dubey, aged about 53 years, R/o Naya Khursipar, Ward No.36, Shikshak Colony, Khursipar, Police Station Khursipar, Bhilai, Tahsil and District Durg (C.G.)

---- Applicant

Versus

1. State of Chhattisgarh, Through the Station House Officer, Police Station Khursipar, Bhilai, District Durg (C.G.)

2. Manohar Jethani, S/o Late Dr. Variyal Das Jethani, Aged about 50 years, R/o Baastal, Amardeep Talkies Road, Police Station Gol Bazaar, Raipur (C.G.)

(Complainant)

3. Juglal Patel, S/o Late Suklu Marar, R/o Nutan Chowk, Bhilai-3, Tahsil Patan, District Durg (C.G.)

4. Rupesh Verma, Designation Tahsildar, Court of Nayab Tahsildar, Bhilai-3, Tahsil Patan, District Durg (C.G.), Present Address: Parivartit Vibhag, Collectorate Premises, Raipur (C.G.)

5. In-charge Police Station, Police Station: New Khursipar, Bhilai, District Durg (C.G.) (Officer during the tenure period of year up to 2012-14)

6. Superintendent of Police, Office of the Superintendent of Police, First Floor, District Magistrate Building, Durg, District Durg (C.G.)

---- Non-applicants

For Applicant: Dr. N.K. Shukla, Senior Advocate with Mr. Vikram Sharma, Advocate.

For Non-applicants No.1, 5 and 6/State: -  
Mr. R.N. Pusty, Govt. Advocate.

For Non-applicant No.2/Complainant: -  
Mr. Y.C. Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/07/2018

1. Apprehending arrest in connection with Criminal Complaint Case No.6398/2017 pending in the Court of Judicial Magistrate First Class, Durg, registered at Police Station Khursipar, Bhilai, Distt. Durg, for the offence punishable under Sections 120B, 420, 467 and 468 of the

IPC, the applicant has filed this application under Section 438 of the CrPC for grant of anticipatory bail.

2. In a criminal complaint filed by non-applicant No.2 herein, offence under Sections 120B, 420, 467 and 468 of the IPC was registered at Police Station Khursipar, Bhilai, Distt. Durg, against the applicant in which warrant of arrest has been issued against him.
3. Learned Senior Counsel appearing for the applicant submits that offence has been registered against the applicant on 22-7-2017 and summons were issued which received unserved and thereafter, bailable warrant was issued which also received unserved and straightway, warrant of arrest has been issued which is contrary to the well settled law in this regard. Only in case of service of summons and bailable warrant, if accused remains absconding, then only non-bailable warrant would be issued.
4. Learned State counsel and learned counsel for the complainant / non-applicant No.2 would oppose the application.
5. I have heard learned counsel for the parties and perused the material available on record.
6. Way back, in the year 1976, Their Lordships of the Supreme Court in a Constitution Bench decision in the matter of **State of U.P. v. Poosu and another**<sup>1</sup> had an occasion to consider the question of securing the attendance of accused person while granting special leave against an order of acquittal by holding as under:

“Broadly speaking, the Court would take into account the various factors such as, "the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, tampering with evidence, larger interest of the public and State. (See [The State v. Capt. Jagjit Singh](#) (AIR 1962-SC 253).”

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<sup>1</sup> 1976 (3) SCC 1

7. In the matter of Inder Mohan Goswami and another v. State of Uttaranchal and others<sup>2</sup> Their Lordships of the Supreme Court have held in unmistakable terms that issuance of non-bailable warrants actually interferes with personal liberty and therefore courts have to be extremely careful before issuing non-bailable warrant and laid down the principles, when non-bailable warrants should be issued which state as under :

“Non-bailable warrants should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

\* it is reasonable to believe that the person will not voluntarily appear in court;

\* the police authorities are unable to find the person to serve him with a summon;

\* it is considered that the person could harm someone if not placed into custody immediately.”

In the later part of judgment, Their Lordships cautioned the criminal court to refrain from issuing non-bailable warrant of arrest at first instance by directing as under :

“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 courts proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.”

Their Lordships while concluding, emphasized the need of striking proper balance between individual personal liberty and societal interest/interest of public before issuing warrant by making following pertinent observation:

“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 straight-jacket 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.”

8. In the matter of Raghuvansh Dewanchand Bhasin v. State of Maharashtra and another<sup>3</sup>, it has been held that power and jurisdiction of court to issue appropriate warrant has to be exercised judiciously, striking a balance between the need of law enforcement on the one hand and the protection of citizen from highhandedness at the hands of the law enforcement agencies on the other. Paragraph of report states as under :

“Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter-alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of his absconding. (Also See: State of U.P. Vs. Poosu & Anr.)”

9. In the matter of Vikas v. State of Rajasthan<sup>4</sup>, wherein the trial court while granting an application under Section 319 of the Cr.P.C., directly issued non-bailable warrant for securing attendance of accused, which was affirmed by the High Court, setting aside order of trial court and High Court and emphasizing the need to secure the attendance of accused by first issuing summons/bailable warrant, Their Lordships of the Supreme Court held as under :

<sup>3</sup> 2012 (9) SCC 791

<sup>4</sup> 2014 (3) SCC 321

“.....This could be when firstly it is reasonable to believe that the person will not voluntarily appear in court; or secondly that the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 of the Cr.P.C. would extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case.

The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued.....”

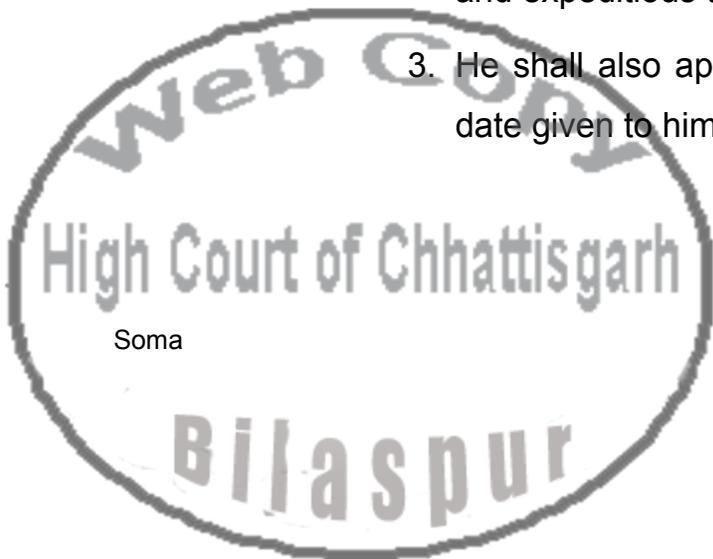
10. Bearing in mind the statutory provision contained in sub-section (2) of Section 319 of the CrPC and judged by the principles of law laid down by Their Lordships of the Supreme Court in above-stated cases (supra), it would appear that power and jurisdiction of trial court to issue appropriate warrant of arrest has to be exercised judiciously and sparingly with utmost circumspection striking a proper balance between the personal liberty guaranteed under Article 21 of the Constitution of India and societal interest and in order to secure attendance of the person accused, the court should first issue summon simplicitor or bailable warrant to accused and only thereafter, if he does not appear after service, as a last resort, non-bailable warrant of arrest should be issued to secure the presence of the accused person.

11. In the instant case, the fact remains that summon and bailable warrant issued to the applicant remained unserved and thereafter, straightway, non-bailable warrant could not have been issued to the applicant in light of the principles of law enunciated by the Supreme Court in the aforesaid decisions (supra). In view of the above, I am of the opinion that it is a fit case in which the applicant should be granted anticipatory bail. Accordingly, the application is allowed.

12. It is, therefore, directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the trial Court on his executing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court. The applicant shall also abide by the following conditions: -

1. He shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer.
2. He shall not act, in any manner, which will be prejudicial to fair and expeditious trial.
3. He shall also appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd/-  
(Sanjay K. Agrawal)  
Judge



HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Criminal Case (A) No.442 of 2018

Surendra Dubey

Versus

State of Chhattisgarh and others

Head Note

Non-bailable warrant of arrest should be issued as a last resort, if accused does not appear after service of summons/bailable warrant.

यदि अभियुक्त समंस / जमानती वारंट की तामीली के बाद भी हाजिर नहीं होता है तो अंतिम उपाय के तौर पर गिरफ्तारी का गैर-जमानती वारंट जारी किया जाना चाहिए।

