

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV. P. 14/2022 and CRL.M.A. 339/2022**

Date of Decision 10/02/2022

IN THE MATTER OF:

SANJAY BHAKTA MATHEMA Petitioner
Through: Mr. Shatadru Chakraborty and Ms.
Surbhi Anand, Advocates.

Versus

VIPIN KUMAR SHARMA & ORS. Respondents
Through: Mr. Kirit Javali, Advocate for
respondent No.1.

AND

CRL.REV.P. 18/2022 and CRL.M.A. 539/2022

HEMANT GOLCHHA Petitioner
Through: Mr. Shatadru Chakraborty and Ms.
Surbhi Anand, Advocates.

Versus

VIPIN KUMAR SHARMA & ORS. Respondents
Through: Mr. Kirit Javali, Advocate for
respondent No.1.

AND

CRL.REV.P. 25/2022 and CRL.M.A. 664/2022

UMESH HINGORANI Petitioner
Through: Mr. Shatadru Chakraborty and Ms.
Surbhi Anand, Advocates.

Versus

VIPIN KUMAR SHARMA & ORS. Respondents

Through: Mr. Kirit Javali, Advocate for
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petitions have been filed under Section 401 read with Section 482 Cr.P.C. on behalf of the petitioners assailing the order dated 27.11.2021 passed by the learned Metropolitan Magistrate, N.I. Act (East), Karkardooma Courts, Delhi in Complaint Case No. 417/2019 filed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881, whereby non-bailable warrants (hereinafter, referred to as 'NBWs') were issued against them.

2. Mr. Shatadru Chakraborty, learned counsel for the petitioners, submits that the absence of the petitioners before the Trial Court was unintentional. It is further submitted that the petitioners have filed their respective undertakings by way of affidavits before this Court, in terms of which they have undertaken to appear before the Trial Court on the next date of hearing, i.e. 02.06.2022.

3. Learned counsel for respondent No.1/complainant, on instructions, submits that in view of the undertakings given on behalf of the petitioners, respondent No.1 has no objection in case the NBWs issued against them are cancelled.

4. It is noted that three petitions, being CRL.M.Cs. 266/2021, 267/2021 and 268/2021, have been filed on behalf of the petitioners seeking quashing of the Complaint Case No. 417/2019, wherein the impugned order dated 27.11.2021 came to be passed.

5. A perusal of the order sheets in the aforesaid cases would show that on 22.11.2021, learned counsel for the petitioners had submitted that the petitioners were not residents of Delhi. Pursuant thereto, it was directed that relevant application seeking exemption from personal appearance be filed before the concerned Trial Court, which shall be dealt with in accordance with law.

6. On 27.11.2021, separate applications seeking exemption from personal appearance were moved before the Trial Court on behalf of the petitioners, stating that they resided outside Delhi and it would be difficult for them to travel to Delhi and appear before the Court under the circumstances.

7. The said applications came to be heard on the same day and the Court observed:-

“...Today an exemption has been moved on behalf of accused no. 3,4 and 5. None has appeared on behalf of remaining accused persons. Grounds made out in the exemption application do not reflect any justifiable reasons for not appearing in court simply because they are not residents of Delhi. Admittedly as per submissions of Ld. Counsel for accused, there is no stay on the present proceedings/quashing petition pending before Hon'ble High Court of Delhi. In view thereof, no cogent grounds are made out to allow the exemption.

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In view thereof, considering that matter has been languishing at the hands of the accused persons who have already got their warrants cancelled on previous dates without furnishing any bail bond and surety bond, issue NBW against all accused persons...”

8. On the aspect of issuance of NBWs against an accused, the Supreme Court in Raghuvansh Dewanchand Bhasin v. State of Maharashtra and Another reported as **(2012) 9 SCC 719**, has observed as follows:-

“10. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The courts have to be extra-cautious and careful while

directing issue of non-bailable warrant else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain the rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other. Indeed, it is a complex exercise. As Cardozo, J. puts it "on the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice."

11. 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. v. Poosu.)

12. In Inder Mohan Goswami v. State of Uttaranchal, a Bench of three learned Judges of this Court cautioned that before issuing non-bailable warrants, the courts should strike a balance between societal interests and personal liberty and exercise its discretion cautiously. Enumerating some of the circumstances which the court should bear in mind while issuing non-bailable warrant, it was observed: (SCC pp. 17-18, paras 53-55)

"53. Non-bailable warrant should be issued to bring a person to court when summons or 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; 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...

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13. We deferentially concur with these directions, and emphasize that since these directions flow from the right to life and personal liberty, enshrined in Articles 21 and 22(1) of our Constitution, they need to be strictly complied with.”

9. In Vikas v. State of Rajasthan reported as **(2014) 3 SCC 321**, the above view has been reiterated by the Supreme Court in the following terms:-

“17. ...Another such instance of judicial discretion is the issue of non-bailable warrant in a complaint case under an application of Section 319 CrPC. The power under Section 319 CrPC 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 likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The conditions for the issuance of non-bailable warrant are reiterated in Inder Mohan Goswami and in State of U.P. v. Poosu, wherein it is mentioned that: (Inder Mohan Goswami case, SCC p. 17, para 53)

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

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 CrPC 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.”

10. In the present case, from a perusal of the material placed on record, it is apparent that on 27.11.2021, the case before the Trial Court was at the

stage of framing of notice. The fact that the petitioners had appeared before the Court on earlier occasions, albeit to get the warrants issued against them cancelled, was not in dispute. A contention was raised by the complainant regarding non-payment of cost by the accused, however it was recorded in the order that the status of the payment of cost was unclear.

11. It was also observed by the Trial Court that the mere fact that the petitioners were not residents of Delhi was not a justifiable ground to exempt them from personal appearance. In this regard, this Court is constrained to note that at the time of filing of the applications for exemption on behalf of the petitioners, the circumstances were not exactly normal. The country was in the grip of the COVID-19 pandemic and thus, travelling between states, even if not completely prohibited, was subject to fulfilment of certain criteria, as a preventive measure.

12. Suffice it to note, a Court is dutybound to weigh all relevant factors before issuing NBWs against a person, as the same entail serious consequences in terms of curtailment of personal liberty of the person against whom such warrants are issued, which is guaranteed under Article 21 of the Constitution of India.

13. In the opinion of this Court, the dispute between the parties being essentially private in nature, balance between societal interest and personal liberty of the accused, in terms of the decisions cited hereinabove, would be struck if the NBWs issued against the petitioners are set aside. Securing liberty of the petitioners in the present case assumes more significance in light of the fact that no satisfaction has been recorded by the Trial Court in the impugned order to the effect that the petitioners are likely to abscond and/or are deliberately evading process of the Court.

14. At the same time however, this Court is also cognizant of the fact that trial in the present case has been delayed on account of the petitioners.

Accordingly, the order dated 27.11.2021, whereby NBWs were issued against the petitioners, is set aside qua them, subject to payment of cost of Rs.15,000/- each by the petitioners, out of which Rs.10,000/- shall be paid to the complainant and the balance amount of Rs.5,000/- shall be deposited with the *Delhi State Legal Services Authority* within four weeks from today.

15. The undertakings filed on behalf of the petitioners, in compliance with the previous orders, are taken on record and they are made bound by the same. The petitioners shall also file their respective undertakings in the form of affidavits before the Trial Court stating that they will appear before the Court regularly.

16. The petitions are disposed of in the above terms, alongwith the pending applications.

MANOJ KUMAR OHRI, J

FEBRUARY 10, 2022

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[Click here to check corrigendum, if any](#)