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HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2584 of 2023

1. M/s Ycon Automobiles Enterprises Pvt. Ltd., R/o 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur Chhattisgarh (2nd) R/o 22b, South Avenue, Choubey Colony, Raipur Tahsil And District Raipur Chhattisgarh.
2. Vaibhav Jain S/o Shri Vimal Jain, Aged About 45 Years Director Of M/s Ycon Automobiles Enterprises Pvt. Ltd. (Wrongly Mentioned In Order Impugned) R/o 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur Chhattisgarh (2nd) R/o 22b, South Avenue, Choubey Colony, Raipur Tahsil And District Raipur Chhattisgarh.
3. Vimal Jain, S/o Late Manik Lal Jain, Aged About 70 Years Director Of M/s Ycon Automobiles Enterprises Pvt. Ltd. (Wrongly Mentioned In Order Impugned). R/o 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur Chhattisgarh (2nd) R/o 22b, South Avenue, Choubey Colony, Raipur Tahsil And District Raipur Chhattisgarh.

----Petitioners

Versus

M/s Bhilai Engineering Corporation Limited, 4/5 Industrial Area, Bhilai, District Durg Chhattisgarh. Through Mahadev Das S/o Late P.Raghunath Memon, Manager/power Of Attorney Hodler M/s Bhilai Engineering Corporation Limited 4/5 Industrial Area, Bhilai, District Durg Chhattisgarh.

----Respondent

AND

CRMP No. 2591 of 2023

1. M/s Ycon Automobiles Enterprises Pvt. Ltd. 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, C.G, 2nd R/o 22b, South Avenue, Choubey Colony, Raipur, Tahsil Raipur, District : Raipur, Chhattisgarh
2. Vaibhav Jain S/o Shri Vimal Jain Aged About 45 Years Director Of M/s Ycon Automobiles Enterprises Pvt. Ltd. 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, C.G, 2nd R/o 22b, South Avenue, Choubey Colony, Raipur, Tahsil Raipur, District : Raipur, Chhattisgarh
3. Vimal Jain S/o Late Manik Lal Jain Aged About 70 Years Director Of M/s Ycon Automobiles Enterprises Pvt. Ltd. 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, C.G, 2nd R/o 22b, South Avenue, Choubey Colony, Raipur, Tahsil Raipur, District : Raipur, Chhattisgarh

----Petitioners

Versus

M/s Bhilai Engineering Corporation Limited 4/5 Industrial Area, Bhilai, District- Durg, C.G Through Mahadev Das, S/o Late P. Raghunath Memon, Manager/power Of Attorney Holder M/s Bhilai Engineering Corporation Limited 4/5 Industrial Area, Bhilai, District : Durg, Chhattisgarh.

----Respondent





AND

CRMP No. 2593 of 2023

1. M/s Ycon Automobiles Enterprises Pvt. Ltd. Residents Of 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur (C.G.) (2nd) R/o 22b, South Avenue, Choubey Colony, Raipur, Tahsil And District Raipur (C.G.)
2. Vaibhav Jain S/o Shri Vimal Jain Aged About 45 Years Director Of M/s Ycon Automobiles Enterprises Pvt. Ltd., Residents Of 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur (C.G.) (2nd) R/o 22b, South Avenue, Choubey Colony, Raipur, Tahsil And District Raipur (C.G.)
3. Vimal Jain S/o Late Manik Lal Jain Aged About 70 Years Director Of M/s Ycon Automobiles Enterprises Pvt. Ltd. Residents Of 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur (C.G.) (2nd) R/o 22b, South Avenue, Choubey Colony, Raipur, Tahsil And District Raipur (C.G.)

----Petitioners

Versus

M/s Bhilai Engineering Corporation Limited 4/5 Industrial Area, Bhilai, District Durg (C.G.) Through Mahadev Das, S/o Late P. Raghunath Memon, Manager/ Power Of Attorney Holder M/s Bhilai Engineering Corporation Limited 4/5 Industrial Area, Bhilai, District Durg (C.G.)

----Respondent

AND

CRMP No. 2594 of 2023

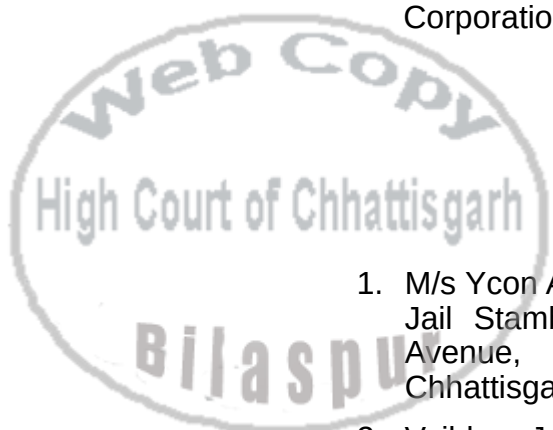
1. M/s Ycon Automobiles Enterprises Pvt. Ltd. R/o 4th Floor, Ravi Bhawan, Jail Stambh Chowk, Raipur (Chhattisgarh) (2nd) R/o 22 B, South Avenue, Choubey Colony, Raipur Tahsil And District Raipur Chhattisgarh
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----Petitioners

Versus

M/s Bhilai Engineering Corporation Limited 4/5 Industrial Area, Bhilai, District Durg Chhattisgarh, Through Mahadev Das, S/o Late P. Raghunath Memon, Manager /power Of Attorney Holder M/s Bhilai Engineering Corporation Limited 4/5 Industrial Area, Bhilai District Durg Chhattisgarh.

----Respondent





For Petitioners : Shri B.P. Sharma, Advocate along with Shri Pushp Kumar Gupta, Advocate.

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

10-11-2023

1. In these bunch cases, non-bailable warrants have been issued against the petitioners by the learned Judicial Magistrate First Class Durg wherein the petitioners are being tried in complaint cases filed under Section 138 of the Negotiable Instruments Act (in short 'NI Act').
2. The facts of the present case are that complaint cases were filed under Section 200 of CrPC for taking cognizance of an offence under Section 138 of the NI Act against the petitioners as few cheques were issued in discharge of liability and the same were dishonoured, thereafter, mandatory demand notices were issued and ultimately, complaint cases were filed. The amount quoted in four cheques is Rs.25,00,000/- each and cheques were issued by the petitioners/accused in favour of the complainant. The petitioners filed these petitions under Section 482 of Cr.P.C. seeking therein liberty to adduce defence evidence as some of the petitioners are not the Directors of the Company in those complaint cases. In all petitions i.e. CRMP Nos. 2499 of 2023, 2497 of 2023, 1507 of 2023 & 1510 of 2023 notices were issued to the complainant and liberty was granted to the petitioners to move an appropriate application before the Court below, seeking an adjournment.





3. The complaint cases were fixed for hearing before the Court below on 09.11.2023. On that day, applications under Section 317 of Cr.P.C. were moved in all four complaint cases along with the copy of orders passed by this Court in different Criminal Miscellaneous Petitions dated 02.11.2023.
4. The learned trial Court rejected the application moved under Section 317 of Cr.P.C. and issued non-bailable warrants against the petitioners. Against the very orders, these petitions have been filed.
5. Mr. B.P. Sharma, learned counsel appearing for the petitioners, would submit that in the matter of the Negotiable Instruments Act particularly, in summon cases, the learned Court below should not have issued non-bailable warrants directly against the petitioners when counsel for the petitioners/accused was present before the Court below and an application under Section 317 of Cr.P.C. was moved in all complaint cases. He would submit that in the matter of **Satender Kumar Antil vs. Central Bureau of Investigation**, reported in **(2022) 10 SCC 51**, the Hon'ble Supreme Court has categorically held that the Court should not resort to issuance of non-bailable warrant against the accused at first instance. It is further stated that if the accused or their counsel are not taking interest in the prosecution of the case, the Court should issue a notice and, thereafter, a bailable warrant and then if the Court comes to the conclusion that the accused are avoiding their presence before the Court concerned then non-bailable warrants should be issued after recording satisfaction. The relevant paragraphs of the judgment passed by the Hon'ble Supreme Court in





the matter of **Satender Kumar Antil** (supra) are quoted herein below:-

“36. This Court in Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1, has held that:

“50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice—liberty is the natural and inalienable right of every human being. Similarly, [Article 21](#) of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued. When non-bailable warrants should be issued

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.*

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 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





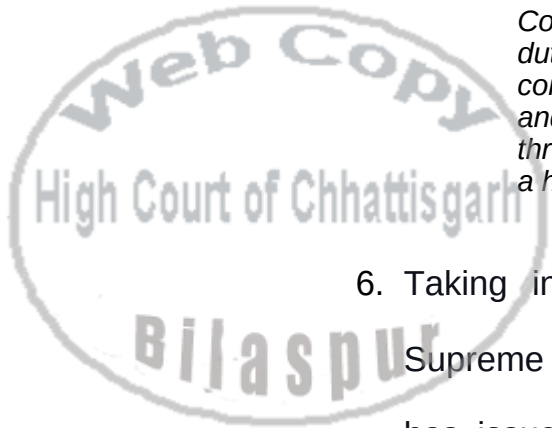
accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

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.

94. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in [the Code](#), has to be preserved, protected, and enforced by the Criminal Courts. Any conscious failure by the Criminal Courts would constitute an affront to liberty. It is the pious duty of the Criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest. "

6. Taking into consideration the law laid down by the Hon'ble Supreme Court and the manner in which the learned Court below has issued non-bailable warrants against the petitioners, in the opinion of this Court, the way in which the non-bailable warrants have been issued is not sustainable in the eyes of law. The liberty of a person is a natural and inalienable right and the same cannot be curtailed by adopting shortcuts. Liberty of human beings flows from Article 21 of the Constitution of India and thus issuance of non-bailable warrants against the petitioners would amount to infringement of that fundamental right. Further, the learned Trial Court has not assigned any reason for the issuance of non-bailable warrants, when the Counsel for petitioners was present and applications under section 317 of Cr.P.C. were moved.





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Consequently, the orders dated 03.11.2023 passed by the learned Judicial Magistrate First Class are hereby set aside and applications moved under Section 317 of Cr.P.C. are allowed. The petitioners are directed to appear before the Court below on the next date of hearing.

7. Accordingly, all the petitions are disposed of.

Sd/-

(Rakesh Mohan Pandey)
Judge

Nimmi

