

IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr. M.P. No. 2719 of 2020

1. Gouri Devi, wife of Badri Yadav, aged about 45 years
 2. Gita Devi, wife of Sukhdev Yadav, aged about 34 years
 3. Anju Devi, wife of Tribeni Yadav, aged about 34 years
 4. Jaswa Devi, wife of Surendra Yadav, aged about 39 years
 5. Saryu Yadav, son of Lalo Yadav, aged about 44 years
 6. Kavilas Devi @ Kavilasi Devi, wife of Saryu Yadav, aged about 39 years
- All are resident of village-Buchai, PO-Kapka, PS-Barkatha,
District-Hazaribagh. Petitioners

-- Versus --

1. The State of Jharkhand
2. Pachiya Devi, wife of Videshi Paswan, resident of village-Buchai, PO-Kapka,
PS-Barkatha, District-Hazaribagh Opp. Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners :- Mr. Prabhat Kumar Sinha, Advocate
For Resp.-State :- Mrs. Niki Sinha, Spl.P.P

5/16.03.2021 Heard Mr. Prabhat Kumar Sinha, the learned counsel for the petitioners and Mrs. Niki Sinha, the learned counsel for the State.

2. This criminal miscellaneous petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The petitioners have questioned the legality and validity of the order dated 14.03.2019 passed in SC/ST Case No.64 of 2019 arising out of Barkatha P.S. Case No.64 of 2015 corresponding to G.R. No.2735 of 2013 and also for quashing the order dated 23.09.2019 whereby processes under section 82 Cr.PC has been directed to be issued.

4. Mr. Prabhat Kumar Sinha, the learned counsel appearing for the petitioners submits that by order dated 14.03.2019 the court below has taken cognizance against the accused persons and by the said order without issuing the summons straight way directed to issue non-bailable warrant. He submits that this is not the only illegality but the trial court further proceeded without receiving the execution report of the non-bailable warrant and passed the order dated 23.09.2019 whereby process

under section 82 Cr.PC has been directed to be issued. He submits that this has been done without following the due process of law and the persons' liberty has been directed to be curtailed in view of the said order without following the process of law. He submits that the case of the petitioners is covered in the light of the judgment of Hon'ble Supreme Court in case of '*Raghuvansh Dewanchand Bhasin v. State of Maharashtra*', (2012) 9 SCC 791. Paragraph nos. 12 and 13 of the said judgment are quoted hereinbelow:

"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.*

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.”

13. *We deferentially concur with these directions, and emphasise 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. However, we may hasten to add that these are only broad guidelines and not rigid rules of universal application when facts and behavioural patterns are bound to differ from case to case. Since discretion in this behalf is entrusted with the court, it is not advisable to lay down immutable formulae on the basis whereof discretion could be exercised. As aforesaid, it is for the court concerned to assess the situation and exercise discretion judiciously, dispassionately and without prejudice. Viewed in this perspective, we regret to note that in the present case, having regard to nature of the complaint against the appellant and his stature in the community and the fact that admittedly the appellant was regularly attending the court proceedings, it was not a fit case where non-bailable warrant should have been issued by the Additional Chief Metropolitan Magistrate. In our opinion, the attendance of the appellant could have been secured by issuing summons or at best by a bailable warrant. We are, therefore, in complete agreement with the High Court that in the facts and circumstances of the case, issuance of non-bailable warrant was manifestly unjustified.”*

5. He further submits that the impugned orders are required to be quashed.

6. Mrs. Niki Sinha, the learned counsel appearing on behalf of the Opposite Party State fairly submits that the due process has not been followed by the court below.

7. On perusal of the impugned order dated 14.03.2019, it transpires that on that day, the court below has taken cognizance against the accused persons and straight way issued the non-bailable warrant in place of issuing the summons against the accused persons. On perusal of the order dated 23.09.2019, it transpires that the direction was issued for issuing the process under section 82 of the Cr.PC. On perusal of the record, it transpires that this order has also been passed without receiving any execution report with regard to the non-bailable warrant which is against the mandate of law rendered by this Court in the case of '*Rustam Alam and Others v. The State of Jharkhand*' [W.P.S No.2722 of

2019].

8. Accordingly, the part of impugned order dated 14.03.2019 and dated 23.09.2019 with regard to issuance of non-bailable warrant and issuance of process under section 82 Cr.PC will not survive.

9. Accordingly, the part of impugned order dated 14.03.2019 so far issuance of non-bailable warrant and dated 23.09.2019 so far as issuance of process under section 82 Cr.PC is concerned are quashed.

10. The matter is remitted back to the court below to proceed further in the light of the judgment rendered by Hon'ble Supreme Court in case of '*Raghuvansh Dewanchand Bhasin*' (*supra*) and the direction issued by this Court in case of '*Rustam Alam and Others v. The State of Jharkhand*' (*supra*) and in terms of Criminal Procedure Code strictly.

11. To the above extent, the criminal miscellaneous petition is allowed and disposed of.

(Sanjay Kumar Dwivedi, J)

SI/