

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL**

ON THE 13th OF FEBRUARY, 2023

MISC. CRIMINAL CASE No. 5932 of 2023

BETWEEN:-

**DEVENDRA KUMAR TIWRI S/O SHRI CHANDRIKA
PRASAD TIWARI, AGED ABOUT 56 YEARS,
OCCUPATION: TEACHER RESIDENT OF VILLAGE-
GANDEV, MANGAWAN, REWA DISTRICT REWA
(MADHYA PRADESH)**

.....APPLICANT

**(BY SHRI MANISH DATT - SENIOR ADVOCATE WITH SHRI SIDDHARTH
BENDEL-ADVOCATE)**

AND

**THE STATE OF MADHYA PRADESH THROUGH POLICE
STATION GARH DISTRICT- REWA (MADHYA PRADESH)**

.....RESPONDENT

**(BY SHRI SATPAL CHADHAR - GOVERNMENT ADVOCATE AND SANDEEP
KUMAR MISHRA - ADVOCATE FOR OBJECTOR)**

.....
*This application coming on for admission this day, the court passed the
following:*

ORDER

This petition under Section 482 of Cr.P.C. has been filed assailing the order dated 11.01.2023 passed by Special Judge POCSO Act, Sirmour, District Rewa whereby upon filing of charge sheet for commission of offence under Sections 354 & 354 (A) of IPC and Section 9/10 of POCSO Act, 2012, Special Judge/Additional Sessions Judge has directed for issuance of arrest warrant for securing the appearance of applicant who was not arrested during trial. Notice under Section 41(A) of Cr.P.C. was issued directing him to remain

present in the Sirmour Court on 16.12.2021 at the time of filing of charge sheet but he did not turn up.

2. Learned senior counsel has contended that learned trial Court instead of issuing summons at the very first instance of filing charge sheet has directed to issue arrest warrant for securing the presence of the applicant in the case..

3. By placing reliance on the judgment of Aman Preet Singh Vs. CBI through Director, 2021 SCC Online SC 941, Siddharth Vs. State of UP and another, (2022) 1 SCC 676 and Satender Kumar Antil Vs. Central Bureau of Investigation and another, (2021) 10 SCC 773 learned senior counsel has contended that Supreme Court in aforesaid cases and other cases too invariably issued guidelines that on the very first date of filing charge sheet arrest warrant be not issued against the accused persons for securing their presence and at first instance summons be issued.

4. On the other hand, learned counsel for the objector as well as learned counsel for the State has submitted that learned trial Court has rightly issued arrest warrant against the applicant as he did not turn up before the trial Court despite service of notice and having due knowledge of filing of charge sheet before the trial Court on a particular date.

5. I have heard rival submissions put forth by learned counsel for the parties.

6. It is settled position of law that non-bailable warrants should be issued to bring a person to Court only when summons or bailable warrants would be unlikely to have the desired result because the issuance of non-bailable warrants involve interference with the personal liberty. Therefore, the Courts have to be extremely careful before issuing non bailable warrants. The warrants either bailable or non-bailable be issued only after proper scrutiny of facts and

complete application of mind, as same involves extremely serious consequences.

7. Hon'ble Supreme Court in the case of *Inder Mohan Goswami and another Vs. State of Uttaranchal and other, (2007) 12 SCC 1* observed as under:-

"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 civilized 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 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; 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 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.

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 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.

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."

8. In the case of Siddharth Vs. State of UP and another (Supra).

Hon'ble Apex Court has held as under:-

"9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 of the Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the charge sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the Investigating Officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word custody appearing in Section 170 of the Cr.P.C. does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the Investigating Officer before the court while filing the charge sheet.

10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond.

Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

11. We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar case how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a pre-requisite formality to take the charge sheet on record in view of the provisions of Section 170 of the Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 of the Cr.P.C"

9. In the case of Chandmal @ Chandanmal Vs. State of MP and another in Criminal Appeal No. 359/2023 [SLP (Crl.) No. 1912/2022] order dated 07.02.2023, identical issue cropped up before Hon'ble Apex Court and it held as under:-

"The issue before us is whether on the charge sheet having been filed and during that period the appellants having cooperated but no having appeared before the court personally but through a counsel, the action of the trial court to issue non-bailable warrants is something which can be sustained.

Learned counsel for the appellants urged on 09.02.2022 as he urges today that the bail ought to have been granted as a matter of course in view of the judgment of this Court in Siddharth Vs. State of Uttar Pradesh & another-(2022) 1 SCC 676. We issued notice and granted interim protection.

Learned counsel for the State does not dispute that no further investigation is required in this matter.

We may note that even the mandate subsequently incorporated in Satender Kumar Antil Vs. Central Bureau of Investigation & another, (2021) 10 SCC 773 has been violated. We fail to understand why despite these judgements having been circulated, some of the trial Courts are conducting and passing the orders in the teeth of these judgments. It is a matter of concern that these cases thus, keep on coming up to the apex court unnecessarily."

10. In the case in hand, learned trial Court has issued the non-bailable warrants on the very first date of filing of the charge sheet. Which is against the mandate given by the Hon'ble Apex Court in aforesaid case laws, learned trial Court ought to have issued summons at the very first instance. If after receipt of the report on summons and bailable warrants, Court is of the view that accused is deliberately avoiding the summons, the Court may issue bailable warrant and if bailable warrant has also not given desired result then if Court is fully satisfied that the accused is avoiding the Court proceedings intentionally, the process of issuance of the non bailable warrant should be resorted to.

11. In view of the aforesaid discussion and well settled position of law, impugned order dated 11.01.2023 directing issuance of the arrest warrant against the applicant at very first instance for securing his appearance is **set aside**. Learned trial Court is directed to issue summons instead of arrest warrant for the appearance of the applicant/accused before the trial Court at first instance.

12. Learned senior counsel for the applicant has submitted that applicant is ready to appear before the trial Court. Considering the submission at bar, applicant is directed to appear before the trial Court on or before 27.02.2023, failing which trial Court shall be at liberty to issue summons for appearance. However, it is made clear that if even after service of summons, applicant does not appear before the Court, it shall be at liberty to issue required coercive process as per law for securing his appearance in the matter before the Court.

13. This petition is **disposed of** accordingly.

L.R.

