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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.65 of 2015

Order reserved on: 11-12-2020

Order delivered on: 4-1-2021

Lala @ Daneshwar, S/o Chhotelal, aged about 25 years, R/o Dewanganpara, Takhatpur, Civil and Revenue District Bilaspur (C.G.)

(Applicant) (In Jail)
---- Petitioner

Versus

State of Chhattisgarh, through Station House Officer, Police Station Takhatpur, District Bilaspur (C.G.)

---- Respondent

For Petitioner: Mr. Mirza Hafeez Baig, Advocate.
For Respondent/State: -
Mr. Animesh Tiwari, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner herein calls in question legality, validity and correctness of the impugned order dated 7-10-2014 passed by the Additional Sessions Judge (FTC), Bilaspur in Criminal Revision No.119/2014, by which his revision petition has been dismissed affirming the order dated 11-4-2014 passed by the Judicial Magistrate First Class, Takhatpur in Criminal Case No.60/2014, whereby the petitioner's application for grant of bail under Section 437 of the CrPC has been rejected by the learned trial Magistrate.

2. The above-stated challenge has been made on the following factual backdrop: -

3. The Police Station: Takhatpur registered first information report against the petitioner under Sections 509 of the IPC, 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986 read with Sections 66(3), 67 and 72 of the Information Technology Act, 2000 (for short, 'the IT Act') on 18-1-2013 and since all the offences registered against him were bailable offences, he was released on personal bond on 19-1-2013 by concerned police officer. It is the case of the petitioner that he was not intimated by the jurisdictional police about the filing of charge-sheet before the jurisdictional criminal court, but ultimately, without intimation to him, charge-sheet was filed on 28-3-2014 in his absence before the said Court and the said Court straightway registered criminal case and issued non-bailable warrant of arrest on which he was arrested and produced before the Magistrate on 10-4-2014 and he was straightway sent to the Central Jail, Bilaspur and his application filed under Section 437 of the CrPC on 10-4-2014 was placed for consideration on the next date i.e. 11-4-2014 and on 11-4-2014, it was rejected holding that the offences which he has been charged are bailable, yet *prima facie*, offence under Section 67A of the IT Act is also made out which is non-bailable offence, therefore, his application was rejected and revision preferred against that order has also been said to be dismissed by the impugned order.

4. This petition under Section 482 of the CrPC has been preferred stating inter alia that non-consideration of bail

application in respect of the bailable offences by the learned trial Magistrate on the same day was clearly unwarranted and it is violation of his personal liberty and further, on the material placed before the Court on the date of producing his application for grant of bail only bailable offences were charged against him and therefore rejection without even directing for addition of charge under Section 67A of the IT Act is clearly unwarranted and it amounts to denial of personal liberty of the accused and unnecessarily he was required to remain in jail, and also on the ground that the accused was already released on personal bond on 19-1-2013 by the police station finding the offences are bailable and without intimation, charge-sheet was filed on 28-3-2014 and straightway non-bailable warrant of arrest was issued in bailable offences for prosecution of the petitioner in bailable offences which is clearly unsustainable and contrary to law, as such, the impugned order as well as the revisional order deserve to be set aside.

5. The State / respondent has filed return opposing the petition holding that the judicial order has rightly been passed which requires no interference.

6. Mr. Mirza Hafeez Baig, learned counsel appearing for the petitioner, would submit as under: -

    1. On the date of filing of challan, the petitioner was already on bail released by concerned police officer as all the offences were bailable offences, therefore, on the production of charge-sheet, intimation about filing of

charge-sheet ought to have been issued by the jurisdictional police to the petitioner so that he could have appeared before the jurisdictional Magistrate for accepting the charge-sheet; even in absence of that, the learned Judicial Magistrate could not have issued warrant of arrest straightway for securing his attendance for his prosecution in the bailable offences even without verifying the fact of knowledge of the date of filing of charge-sheet to the petitioner.

2. On 10-4-2014, in pursuance of the warrant of arrest, the petitioner was arrested and when he was produced on 10-4-2014, he immediately filed application for grant of bail under Section 437 of the CrPC, but it was not considered on the same day and was posted on the next date i.e. 11-4-2014 which is clear violation of his fundamental right, as in bailable offences he could not have been sent to jail by adjourning the matter conveniently for the next date by the learned Magistrate.

3. The petitioner's application for grant of bail was required to be considered on the basis of material available on record in which he was only charged with the bailable offences on the date of consideration of his bail application, but the learned Magistrate in order to justify his illegal action of sending the petitioner to jail, held that offence under Section 67A of the IT Act has also been committed by the petitioner, which is wholly uncalled for. As such, the impugned order and the

revisional order deserve to be set aside.

7. On the other hand, learned State counsel would support the impugned orders citing that the judicial order passed by both the Courts are strictly in accordance with law.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

9. It is not in dispute that on 18-1-2013, Crime No.19/2013 was registered against the petitioner by Police Station: Takhatpur for the offences punishable under Sections 509 of the IPC, 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986 read with Sections 66(3), 67 and 72 of the IT Act, which are bailable offences and pursuant to which he was released on personal bond by the police officer of Police Station: Takhatpur on 19-1-2013. But it appears from the record, as it is the case of the petitioner, that he was not intimated about filing of charge-sheet on 28-3-2014 by the jurisdictional police and straightway, showing him having been absconded, charge-sheet was filed before the Court concerned on 28-3-2014. It appears from the record that in a cyclostyle proforma, the learned Magistrate filled up the name of accused and offences to which the petitioner was charged and straightway issued non-bailable warrant of arrest against him upon which he was arrested on 10-4-2014. On 10-4-2014, the order sheet reflects the time 5.30 p.m. along with the date of production of the petitioner before the said Court, but the order sheet refers that he has been produced at 4.45 p.m. and

bail application has also been filed by the petitioner at 5.30 p.m., however, the learned Magistrate firstly directed the petitioner to be sent to jail and adjourned his application under Section 437 of the CrPC for the next date on 11-4-2014 and on 11-4-2014, rejected the application holding that though the offences are bailable, but offence under Section 67A of the IT Act is also *prima facie* attracted.

10. The petitioner has emphatically stated that he was not informed about filing of charge-sheet before the concerned Court by which non-bailable warrant of arrest has been issued, and the State has not controverted the fact that he was not informed / intimated about filing of charge-sheet on 28-3-2014. When the accused has been released on personal bond on bailable offences, it was the duty on the part of the concerned investigating officer to inform the accused well in advance for securing his appearance before the learned Judicial Magistrate for accepting the charge-sheet and submitting himself to the jurisdiction of that court for prosecution. Such a lapse on the part of the Station House Officer is clearly unacceptable. The investigating officer or the officer filing the charge-sheet was obliged to intimate the accused about filing of charge-sheet which he has failed to observe in the present case. As such, the petitioner could not appear before the Court on 28-3-2014. But it appears that the learned trial Magistrate on 28-3-2014, on the date of filing of charge-sheet, on a cyclostyle proforma filled up the name of the accused including the Sections / offences with which he

has been charged and straightway issued non-bailable warrant of arrest against the accused / petitioner herein.

11. Their Lordships of the Supreme Court time and again in series of judgments, deprecated the practice of courts in straightway issuing non-bailable warrant of arrest for securing the attendance of accused persons.

12. 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**[1] 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)}."

13. In the matter of **Inder Mohan Goswami and another v. State of Uttaranchal and others**[2] 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

1 (1976) 3 SCC 1
2 (2007) 12 SCC 1

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 issue 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."

14. In the matter of **Raghuvansh Dewanchand Bhasin v. State of Maharashtra and another**[3], 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 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.)"

15. Similarly, in the matter of **Vikas v. State of Rajasthan**[4], wherein the trial Court while granting an application under Section 319 of the CrPC, directly issued non-bailable warrant for securing attendance of accused, which was affirmed by the High Court, setting aside the order of the trial Court and

3 (2012) 9 SCC 791
4 (2014) 3 SCC 321

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:-

> "... 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. ..."

16. Following the principles of law laid down by their Lordships of the Supreme Court in the above-stated cases (supra), it would appear that power and jurisdiction of Criminal 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 should be issued to secure presence of accused person.

17. Thus, in view of the aforesaid facts, the learned Magistrate was absolutely unjustified in straightway issuing non-bailable

warrant of arrest for securing the attendance of the petitioner who stood enlarged on personal bond by the police station, particularly in absence of any evidence / documents on record to show that he was informed about filing of charge-sheet or he was absconded and he was beyond the reach of the concerned police station. As such, the order of the learned Magistrate in straightway issuing non-bailable warrant of arrest for securing the attendance of the petitioner for his prosecution in bailable offences in which he has already been enlarged on personal bond by police officer deserves to be deprecated and is contrary to the principles of law laid down by their Lordships of the Supreme Court noticed herein-above. Not only this, thereafter, the petitioner was arrested and produced before the Magistrate on 10-4-2014 and order sheet dated 10-4-2014, which is in two parts, states as under: -

10.04.14
5:30

थाना तखतपुर के सहायक उप निरीक्षक श्री आर.के. निषाद द्वारा अभियुक्त दानेश्वर देवांगन को जरिये गिरफ्तारी वारंट के तहत 4:45 बजे पेश किया। अभियुक्त को न्यायिक अभिरक्षा में लिया गया।

अभियुक्त का जेल वारंट तैयार कर केन्द्रीय जेल भेजा जाये।

सही/–
विवेक गर्ग
न्यायिक मजिस्ट्रेट प्रथम श्रेणी
तखतपुर, जिला बिलासपुर (छ.ग.)

पुनश्चः–
5:30

अभियुक्त दानेश्वर की ओर से श्री वेग अधिवक्ता द्वारा एक आवेदन अन्तर्गत धारा 437 द.प्र.सं. के तहत जमानत पर छोड़े जाने हेतु मय उपस्थिति ज्ञापन पेश किया।

प्रकरण आवेदन पर तर्क एवं विचार हेतु दिनांक 11.04.2014

सही/–
विवेक गर्ग
न्यायिक मजिस्ट्रेट प्रथम श्रेणी
तखतपुर, जिला बिलासपुर (छ.ग.)

18. A careful perusal of the aforesaid order sheet states that the petitioner was arrested and produced before the Magistrate. The order sheet was recorded at 5.30 p.m. in which it has been mentioned that the petitioner has been arrested at 4.45 p.m. and produced before the Magistrate, but later on, at 5.30 p.m. filing of bail application under Section 437 of the CrPC was also recorded. The learned Magistrate firstly, at 5.30 p.m. recorded the order sheet and directed the accused to be sent to Central Jail and thereafter, secondly, again at 5.30 p.m., noted the filing of application under Section 437 of the CrPC for grant of bail in the order sheet and conveniently adjourned the hearing of bail application for next date i.e. 11.04.2014. Since the offences with which the accused / petitioner was charged were bailable offences, he could have been granted bail under Section 437 of the CrPC immediately then and there only, and the matter could not have been adjourned as in bailable offences, bail is a matter of right.

19. The question as to whether a person accused of a bailable offence is entitled to grant bail as a matter of right stands authoritatively concluded by their Lordships of the Supreme Court in the matter of **Rasiklal v. Kishore S/o Khanchand Wadhwani**[5] in which it has been clearly held that in bailable offence, the right of accused to get bail is absolute and

5 (2009) 4 SCC 446

indefeasible right and the courts have no discretion in granting bail. Their Lordships observed as under: -

> "9. ... There is no doubt that under Section 436 of the Code of Criminal Procedure a person accused of a bailable offence is entitled to be released on bail pending his trial. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be open to the officer or the court to discharge such person on his executing a bond as provided in the section instead of taking bail from him."

20. In view of the above, the accused / petitioner was entitled for grant of bail as a matter of right on 10-4-2014 itself, but the learned Magistrate firstly directed the petitioner to be sent to Central Jail and thereafter, adjourned the matter for next date of hearing and on the next date, when the matter came up for hearing, the Magistrate held that offence under Section 67A of the IT Act is also made out which is non-cognizable and consequently, rejected the application which has been seriously called in question by the petitioner on the ground that as on 11-4-2014, the date on which the bail application was heard and considered, there is no addition of charges for offence under Section 67A of the IT Act either by the police or by the Court after hearing the charges by framing charge or at any stage, but at the time of considering the application under Section 437 of the CrPC, it could not have been done by the learned Magistrate.

21. The Supreme Court in the matter of **Pradeep Ram v. State of**

Jharkhand and another[6] considered the question as to whether in a case where the accused has been bailed out in a criminal case in which subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the accused in custody. Their Lordships formulated the following question in paragraph 9.1 of the report: -

> "9.1.(i) Whether in a case where an accused has been bailed out in a criminal case, in which case, subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the accused in custody?"

Their Lordships considered the issue threadbare and ultimately, in paragraph 31 of the report answered the question as under: -

> "31. In view of the foregoing discussions, we arrive at the following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:
>
> 31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.
>
> 31.2. The investigating agency can seek order from the court under Section 437(5) or 439(2) CrPC for arrest of the accused and his custody.
>
> 31.3. The court, in exercise of power under Section 437(5) or 439(2) CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and

6 (2019) 17 SCC 326

commit him to custody on addition of graver and non-bailable offences which may not be necessary always with order of cancelling of earlier bail.

31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the court which had granted the bail."

22. Following the principle of law laid down in **Pradeep Ram** (supra), it is quite vivid that since the petitioner was earlier enlarged on bail by the jurisdictional police and he was already on bail on the date he was arrested and brought before the Court in bailable offence and there was no addition of charges either by the police or by the criminal court at the stage of charge or otherwise, the petitioner / accused was entitled to be released on bail. If any additional offence is made out against the accused / petitioner, the learned trial Magistrate could have directed to consider the same at appropriate stage at the stage of framing charges and meanwhile, he could have released the accused / petitioner on bail. It appears that though on that day i.e. 11-4-2014, there was no charge against the petitioner for non-bailable offence, yet, he remained in custody merely on the basis of observation made by the learned Magistrate that offence under Section 67A of the IT Act is also *prima facie* made out, which has been seriously disputed by learned counsel for the petitioner that in order to justify the sending of accused / petitioner to jail, said observation was made by the learned

Magistrate.

23. On the basis of aforesaid discussion, following facts would emerge on the face of record: -

1. The petitioner was enlarged on bail by the jurisdictional police finding the offences alleged against him to be bailable offences, yet he was not informed about filing of charge-sheet for joining the prosecution before the learned Magistrate on 28-3-2014 which is a serious lapse on the part of the investigating officer by not informing and filing charge-sheet branding him to be absconding.

2. The learned Magistrate straightway issued warrant of arrest on 28-3-2014 in a cyclostyle proforma without appreciating and relying upon the facts that the offences with which the petitioner has been charged are bailable offences and he has been enlarged on bail and without adverting to the binding judgments of the Supreme Court as noticed herein-above, straightway, non-bailable warrant of arrest has been issued for securing the attendance of the accused for his prosecution in bailable offences.

3. On production of the accused / petitioner on 10-4-2014, firstly, the trial Magistrate at 5.30 p.m. recorded in the order sheet that the accused has been produced at 4.45 p.m. and directly directed him to be sent to the Central Jail and immediately thereafter, when the accused

submitted application under Section 437 of the CrPC for grant of bail, his bail application was taken on record and directed it to be listed on the next date i.e. 11-4-2014.

4. On 11-4-2014, the bail application was rejected holding that though the offences which the accused has been enlarged are bailable offences, yet offence under Section 67A of the IT Act is also made out against him, particularly when no offence was added either by the police or by the Court in a duly constituted proceeding.

24. As such, the entire procedure adopted by the learned Magistrate in entertaining the charge-sheet without verifying as to service of notice for appearance of the petitioner / accused and straightway issuing warrant of arrest in which the accused has already been enlarged on bail and thereafter, on his production sending him to Central Jail and keeping his application for grant of bail on the next date of hearing and on the next date rejecting his bail application without adding offence under Section 67A of the IT Act, is totally unknown to law. The accused has not been treated fairly by the police and by the learned Magistrate and his request for grant of bail in bailable offences has been adjourned by keeping the application under Section 437 of the CrPC for hearing on the next date and meanwhile, he was sent to jail and thereafter, non-grant of bail in bailable offences resulted in violation of his personal liberty guaranteed under Article 21 of the Constitution of India.

Though the petitioner / accused was brought to the Court for his prosecution, yet, he is entitled to be treated fairly by the respondent and by the Court by adhering to the procedure established under the law. The learned Magistrate was required to issue summons to the accused on filing of charge-sheet against him for his appearance. When the notice issued to the accused is served and thereafter, if in compliance of summon or bailable warrant, if he could not appear, then only the Magistrate could have issued non-bailable warrant of arrest against the accused. The extraordinary power of issuance of non-bailable warrant of arrest should be exercised as a last resort particularly when charge-sheet has been filed against the accused for bailable offences. Similarly, bail application ought to have been considered on that day itself particularly when the offences were bailable. Sending the accused to bail and adjourning the matter to next day for consideration of bail application is clearly unacceptable and cannot be countenanced. Finally, rejecting the bail application holding that *prima facie*, Section 67A of the IT Act is also made out against the accused / petitioner without having addition of the said charge by the police or by way of framing charge-sheet by the Court itself, the petitioner's right to be released on bail in bailable offences has seriously been jeopardised.

25. Consequently, the impugned revisional order as well as the order passed by the trial Magistrate are hereby set aside. However, this will not bar the learned Magistrate to consider

the entire material at the time of framing charge. This Court has not expressed any opinion on the merits of the matter. Since the accused has already been released on bail, no further order is required to be passed.

26. This petition stands disposed of with the following directions:-

1. Whenever charge-sheet is to be filed and accused is already bailed out, the concerned investigating officer will ensure that intimation to the accused is given in legally permissible mode about date and place of filing charge-sheet and file the proof to the Court along with charge-sheet.

2. On production of charge-sheet, concerned court shall verify about intimation to the accused, date etc., about filing of charge-sheet has been given or not and depending upon that satisfaction, the court shall ensure the presence of accused strictly in accordance with the judgments rendered by the Supreme Court in **Poosu** (supra), **Inder Mohan Goswami** (supra), **Raghuvansh Dewanchand Bhasin** (supra) and **Vikas** (supra).

3. Criminal Courts should consider the bail applications particularly in respect of the offences which are bailable on the same day itself without any delay and should not unnecessarily postpone the hearing of bail application for next day sending the accused to jail. Such a practice should be followed strictly by all the criminal courts.

27. With the aforesaid observations and directions, the petition

stands finally disposed off.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.65 of 2015

Lala @ Daneshwar

Versus

State of Chhattisgarh

Head Note

Criminal courts should not issue non-bailable warrant of arrest straightway at the first instance and investigating officer should inform the accused about filing of charge-sheet specially when he is on bail.

दाण्डिक न्यायालयों को प्रथम दृष्टया सीधे गैर जमानतीय गिरफ्तारी वारंट जारी नहीं करना चाहिए, विवेचना अधिकारी को आरोप पत्र दाखिल करने के संबंध में आरोपी को सूचित करना चाहिए विशेषतः जब वह जमानत पर हो।