

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

CRIMINIAL PETITION No.6454 OF 2023

Between:

1. Naresh Mandapuram

2. M.Nageshwara Rao

... Petitioner/Accused Nos.1 and 3

AND

1. The State of Telangana

2. S. Shekar Reddy

...Respondent/*De-facto* complainant

DATE OF JUDGMENT PRONOUNCED: 20.07.2023

Submitted for approval.

THE HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

G.ANUPAMA CHAKRAVARTHY, J

*** HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY**

+ CRIMINIAL PETITION No.6454 OF 2023

% Dated 20.07.2023

1. Naresh Mandapuram
2. M.Nageshwara Rao

... Petitioner/Accused Nos.1 and 3

AND

1. The State of Telangana
2. Shekar Reddy

...Respondent/*De-facto* complainant

! Counsel for the Petitioner: Sri P.Prasanth

^ Counsel for the Respondent: Sri S.Ganesh, learned
Assistant Public Prosecutor
for Respondent No.1

>HEAD NOTE:

? Cases referred

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY**CRIMINIAL PETITION No.6454 OF 2023****ORDER:**

This Criminal Petition is filed under Section 482 of Code of Criminal Procedure (for short 'Cr.P.C.') by the petitioners/accused Nos.1 and 3 seeking to set aside the docket order dated 17.04.2023 in C.C.No.1016 of 2017 passed by the I Additional Chief Metropolitan Magistrate at Nampally, Hyderabad.

2. The brief facts culled out from the complaint are that respondent No.2 filed a complaint against the petitioners/accused Nos.1 and 3 and other accused alleging that the petitioners along with others gathered and staged dharna in front of TS Secretariat, NTR Marg, Hyderabad and started raising slogans against the Government of Telangana with the following demands:

- a) To fulfill all Government Teacher vacancies.
- b) To announce KG to PG Education rules and regulations.
- c) To take action on the Private and Corporate Education colleges and schools, who are running against the Government rules and to implement Fees Regulation Act and Laws.
- d) To disclose report of Tirupathi Rao Committee.
- e) To amend the Right to Education Act and implement it and
- f) Strengthen the Government Education colleges by introducing English Medium along with Telugu Medium.

It is further alleged that they obstructed the free flow of traffic, entry and exit of visitors and employees of TS Secretariat, thereby disobeyed the orders of Government of Telangana. Basing on the same, respondent No.2 registered a case in FIR No.260 of 2017 on the file of the Station House Officer, Saifabad Police Station, Hyderabad.

3. Heard learned counsel for the petitioners and Sri S.Ganesh, learned Assistant Public Prosecutor for respondent No.1 – State. Perused the record.

4. Learned counsel for the petitioners contended that the police, after conducting investigation, filed charge sheet and the same is numbered as C.C.No.1016 of 2017 on the file of I Additional Chief Metropolitan Magistrate at Nampally, Hyderabad. It is further contended that the petitioners received summons from the trial Court and the case was posted to 17.04.2023 for appearance of the accused. But due to personal urgency, the petitioners were absent on the said date. Thereafter, the trial Court has issued NBWs against the petitioners in a mechanical manner. It is also contended that in a bailable offence, the trial Court ought to have issued only bailable warrants and Non-Bailable Warrants issued against the petitioners herein are illegal

and contrary. Therefore, prayed to set aside the docket order dated 17.04.2023.

5. To support his contentions, learned counsel for the petitioners relied upon the following judgments:

i) ***Devendra Kumar Tiwri v. The State of Madhya Pradesh¹***, wherein the High Court of Madhya Pradesh (Jabalpur Bench) has held as follows:

“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.”

¹ MANU/MP/0399/2023

ii) ***Inder Mohan Goswami v. State of Uttaranchal***², wherein

the Full Bench of Hon'ble Supreme Court has held as follows:

"48. 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 nonbailable warrants.

49. 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.

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;*
- 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.*

50. 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.

² MANU/SC/7999/2007

51. *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.*

52. *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.*

53. *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.*

54. *On consideration of the totality of facts and circumstances of this case, the impugned judgment and order of the High Court cannot be sustained."*

iii) **Sun Agro Chemical Industries v. M.P.Mahendran³,**

wherein the High Court of Madras (Madhurai Bench) has held as follows:

"7. The learned Judge has also held in the decision, as cited supra, that:

³ MANU/TN/2481/2010

Non-bailable warrant issued without a preceding bailable warrant where the offence is bailable is not in accordance with the scheme of the Criminal Procedure Code and hence illegal. Therefore, while exercising the power conferred under Section 87, Cr.P.C. and issuing a warrant, in a case of bailable offence, the Magistrate shall always issue at the first instance a bailable warrant (including the endorsement provided under Section 71, Cr. P.C). If the person does not appear before the Court even after execution of bailable warrant, then, and only then the Magistrate may issue a non-bailable warrant. Therefore, in all cases under Section 138 of the Negotiable instruments Act, though it is possible or there is no legal infirmity for the Magistrate to issue a non-bailable warrant for the reasons to be recorded in writing, yet, considering the bailable nature of the offence under Section 138 of the Negotiable Instruments Act the Magistrate shall always Issue "bailable warrant" at the first instance. For the above reasons there appears no reason or no circumstances warranting the issue of non-bailable warrant in this case."

12. *Considering the above said citations, the dictum laid down by the Apex Court as to when the offence is bailable, in what circumstances Non Bailable Warrant can be issued. But, in the present case, the Judicial Magistrate has committed error in issuing non bailable warrant, he ought to have issued only bailable warrant and if the person does not appear even after the execution of the warrant, then, Non Bailable Warrant has to be issued. In such circumstances, I am of the view that the Non Bailable Warrant issued against the petitioners are illegal and the same is liable to be set aside."*

All the above stated citations clearly apply to the facts and circumstances of the present case.

6. On perusal of the docket order dated 17.04.2023, it is evident that the police filed report stating that the summons were served on the petitioner/accused Nos.1 & 3 and accused No.4. As there was no representation on the said date, they were called absent and NBWs were issued to them.

7. As per the procedure laid down under Cr.P.C. in a bailable offence, it is for the Court to issue bailable warrant at the first instance and inspite of receiving the bailable warrants, if the accused are avoiding to appear before the Court intentionally, then, non-bailable warrants need be issued to the accused.

8. As seen from the docket order proceedings, no such steps have been taken by the trial Court. Therefore, this Court is of the considered view that the order dated 17.04.2023 is liable to be set aside.

9. In view of the above, the docket order dated 17.04.2023 in C.C.No.1016 of 2017 passed by the I Additional Chief Metropolitan Magistrate at Nampally, Hyderabad, is hereby set aside. Further, the petitioners/accused Nos.1 and 3 are directed to appear before the trial Court on 01.08.2023.

10. As the docket order dated 17.04.2023 is set aside, the petitioners/accused Nos.1 and 3 shall file a memo of appearance before the trial Court and shall co-operate in concluding the trial.
11. Accordingly, the Criminal Petition is disposed of.

Pending miscellaneous applications, if any, shall stand closed.

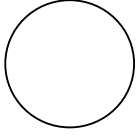
G.ANUPAMA CHAKRAVARTHY, J

Date: 20.07.2023

Note: L.R. copy to be marked.

Issue C.C. by tomorrow.

B/o.TMK



HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

CRIMINIAL PETITION No.6454 OF 2023

Date: 20.07.2023

Note: L.R. copy to be marked.
Issue C.C. by tomorrow.
B/o.TMK