

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

Criminal Petition No.9668 of 2025

ORDER

This Criminal Petition is filed under Section 528 of *Bharatiya Nagarik Suraksha Sanhita, 2023* (for short 'the BNSS') to set aside the order dated 10.07.2025 in Criminal Revision Petition No.81 of 2025 passed by the Sessions Judge, Hyderabad and recall the Non-Bailable Warrant (NBW) dated 30.12.2024 issued by the IV Additional Chief Judicial Magistrate, Hyderabad in C.C.No.15408 of 2024.

2. I have heard Mr. Baglekar Akash Kumar, learned counsel for the petitioners and Mr.Jithender Rao Veeramalla, learned Additional Public Prosecutor, representing the respondent No.1-State.

3. The petitioners are accused in C.C.No.15408 of 2024 on the file of the IV Additional Chief Judicial Magistrate, Nampally, Hyderabad for the offences under Sections 329(4), 232, 351(3), 3(5) of *Bharatiya Nyaya Sanhita, 2023* (for short, 'BNS, 2023').

4. At the stage of issuing summons, the trial court, noting that Accused Nos. 3 and 4 had been absconding since the commencement of proceedings, directed the issuance of Non-Bailable Warrants (NBWs) against them. Subsequently, the petitioners filed an application under Section 72(2) of the BNSS seeking recall of the NBWs. The

court below, however, observed that although the petitioners had been ordered to be present, they had remained absent. On that basis, the court dismissed the application. Aggrieved by this order, the petitioners have preferred the present petition challenging the same.

5. Learned counsel for the petitioners submits that, even according to the prosecution, Accused Nos. 1 to 4 are residents of the same premises. However, the investigating agency chose to serve notice under Section 35(3) of the BNSS only on Accused Nos. 1 and 2, and no such notice was ever served upon the petitioners at any stage of the proceedings. It is contended that the trial court, without considering this crucial aspect, proceeded to issue Non-Bailable Warrants (NBWs) against the petitioners.

Counsel further argues that all the alleged offences are punishable with imprisonment of less than seven years, and therefore, the trial court ought to have followed the guidelines laid down by the Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar and Another* (2014) 8 SCC 273. It is further submitted that the revisional court failed to consider the settled legal position that the petitioners were entitled to receive notice and to be given an opportunity to participate in the proceedings before coercive steps were taken.

Reliance is also placed on the judgment of the Hon'ble Supreme Court in *Satender Kumar Antil v. Central Bureau of Investigation* (2021)

10 SCC 773, wherein the Court categorized offences and prescribed the procedure to be followed by trial courts. According to these guidelines, in the given facts, the court ought first to have issued summons; if those were not complied with, then a bailable warrant; and only if the accused thereafter evaded the process could a non-bailable warrant be issued. Thus, the issuance of NBWs in the present case is, it is argued, *ex facie* unsustainable. It is also submitted that this Court, in other criminal petitions, has clarified that the personal presence of the accused is not mandatory for seeking recall of NBWs. On these grounds, interference by this Court is sought.

6. In response, learned Additional Public Prosecutor submits that, as per the record, the petitioners absconded during the course of investigation and continued to avoid the judicial process even after the filing of the charge sheet. In view of their conduct, the trial court was justified in issuing NBWs. It is argued that the petitioners filed the present application without their physical presence, despite the trial court's specific direction requiring their personal appearance. Filing such a petition in their absence, without demonstrating compelling reasons for non-appearance, was not acceptable.

However, learned Additional Public Prosecutor fairly concedes that, in *Satender Kumar Antil* (supra), the Hon'ble Supreme Court has held that a bailable warrant should ordinarily be issued before resorting

to an NBW. Nevertheless, it is prayed that this Court may pass appropriate orders in light of the petitioners' conduct and the facts of the case.

7. I have perused the materials on record.

8. The alleged offences attributed to the petitioners are punishable with imprisonment of up to seven years. The issuance of notice under Section 35(3) of the BNSS to Accused Nos. 1 and 2 indicates that the investigating agency did not initially intend to arrest the accused. There is neither any material on record nor any order of the learned Magistrate demonstrating that securing the presence of the petitioners/accused, who are stated to be absconding or taking them into custody was essential for the purpose of investigation.

9. In the absence of such a demonstrated and urgent requirement, the mere fact that the investigating agency has shown the accused as absconding cannot, by itself, justify the Magistrate's order issuing NBWs. It is pertinent to clarify that before resorting to coercive measures, the learned Magistrate is duty-bound to carefully examine the materials produced by the investigating agency, including the nature of the process issued, the allegations made, and the evidence collected. An independent judicial assessment must be undertaken to determine whether the presence or custody of the accused is

necessary. Upon forming such an opinion and by recording the reasons though not required to be elaborate the Magistrate may then proceed to exercise jurisdiction to issue coercive process.

10. In the present case, the sole basis recorded for issuing NBWs was that the petitioners were shown as absconding since the filing of the charge sheet. There is no indication that the court made any independent assessment of the facts and circumstances before directing the issuance of NBWs.

11. Moreover, in *Satender Kumar Antil* (supra), the Hon'ble Supreme Court, in paragraphs 3 to 7, has categorically laid down the procedure to be followed in cases involving offences punishable with imprisonment of seven years or less, categorizing such offences and prescribing the sequential process to be adopted before issuing NBWs.

"3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the Courts below. The guidelines are as under :

CATEGORIES/TYPES OF OFFENCES

A) Offences punishable with imprisonment of 7 years or less not falling in category B & D.

B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212(6), etc.

D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

1) Not arrested during investigation.

2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.

(No need to forward such an accused along with the chargesheet (Siddharth Vs. State of UP, 2022 1 SCC 676)

CATEGORY A

After filing of chargesheet/complaint taking of cognizance

a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.

b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.

c) NBW on failure to failure to appear despite issuance of Bailable Warrant.

d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

e) Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORY B/D

On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Category B & D with the additional condition of compliance of the provisions of Bail under NDPS S. 37, 45 PMLA, 212(6) Companies Act 43 d(5) of UAPA, POSCO etc.”

4. Needless to say that the category A deals with both police cases and complaint cases.

5. The trial Courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by learned ASG is that where the accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

6. We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial Court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.

7. The suggestions of learned ASG which we have adopted have categorized a separate set of offences as “economic Offences” not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in Sanjay Chandra vs.CBI, (2012) 1 SCC 40 has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

- (a) seriousness of the charge, and*
- (b) severity of punishment.*

Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the

seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.”

12. By virtue of the above guidelines, where the petitioners have neither been arrested during investigation nor is there any material demonstrating that their judicial custody is necessary for the completion of investigation or trial, the court is bound, in the first instance, to issue summons. Only thereafter, in the event of non-compliance, should bailable warrants be issued to secure their physical appearance. If the accused still fails to appear despite service of bailable warrants, the issuance of Non-Bailable Warrants (NBWs) may be considered. As the impugned order departs from this sequential procedure and is not in conformity with the guidelines, it is liable to be set aside.

13. This Court, however, finds it necessary to clarify that NBWs are to be issued as a measure of last resort, solely for the purpose of securing the presence of the accused. In such course, the practice of filing applications for recall of NBWs in absentia, as a matter of routine, by relying on orders passed in other cases involving different factual circumstances, is not acceptable. As a general rule, a petition seeking recall of NBWs should be filed in the physical presence of the accused. Nevertheless, in exceptional situations, where the accused is unable to appear in person due to unavoidable and compelling circumstances,

and the court concerned is satisfied of the *bona fides* of such reasons, may consider an application for recall of NBWs even in the absence of the accused.

14. In view of the foregoing, and particularly as the impugned order has been passed without adherence to the prescribed procedure, it is hereby set aside. The petitioners are directed to appear in person before the trial Court on or before the date of the next adjournment and file appropriate petition whereupon learned Magistrate is directed to recall the NBWs and shall proceed further with the pending calendar case strictly in accordance with law.

15. In the above terms, the criminal petition is allowed.

Pending miscellaneous applications, if any, shall stand closed.

N.TUKARAMJI, J

Date:13.08.2025
ccm