REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1758 OF 2011
(Arising out of S.L.P. (Crl.) No.5412 of 2008)

RAGHUVANSH DEWANCHAND BHASIN — APPELLANT

VERSUS

STATE OF MAHARASHTRA & ANR. — RESPONDENTS

J U D G M E N T

D.K. JAIN, J.:

Leave granted.

2. This appeal, by special leave, is directed against the judgment and order dated 26th November 2007, rendered by the High Court of Judicature at Bombay, in CRL. W.P. No.1086/2002. By the impugned judgment, while allowing the writ petition filed by the appellant, alleging harassment on account of his arrest on the strength of a non-bailable warrant, which had been cancelled, the High Court has directed the delinquent police officer to

pay by way of costs to the appellant an amount of `2,000/- from his own account.

3. Shorn of unnecessary details, the facts material for adjudication of the present case, may be stated thus:

Some time in the year 2000, one, Mr. Prem Harchandrai filed a complaint, being C.C. No. 163/P/2000, against the appellant, a practicing Advocate, under Section 324 of the Indian Penal Code, 1860 (for short "the IPC"), in relation to some incident alleged to have taken place in the 'Radio Club' at Mumbai, considered to be a club for the elite. When at a preliminary stage, the case came up for hearing before the Additional Chief Metropolitan Magistrate on 7th August, 2002, finding the appellant to be absent, the Court issued a non-bailable warrant against him returnable on 31st October, 2002. The warrant was forwarded to the Colaba Police Station for execution. However, on 12th August, 2002, on appellant's putting in an appearance before the Court, the warrant was cancelled.

4. On 15th August, 2002, the complainant approached the Colaba Police Station and insisted on the arrest of the appellant in pursuance of the said non-bailable warrant. Thereupon, respondent No. 2, who at that point of time was posted as an Inspector of Police at the Colaba Police Station, directed a constable to accompany the complainant, and

execute the warrant. When the appellant was sought to be arrested, he informed the constable that the said warrant had already been cancelled. However, as he could not produce any documentary evidence relating to cancellation of warrant, the appellant was arrested before a public gathering which had assembled at the Radio Club, in connection with the Independence day celebrations. He was produced before the duty Magistrate at about 2 P.M., the same day. The Magistrate directed the release of the appellant. It appears that the appellant obtained the necessary confirmation about cancellation of the warrant on the next day i.e. 16th August 2002 and produced the same before respondent No. 2 on the same day. Alleging *malafides* and humiliation at the hands of respondent No. 2, in collusion with the complainant, the appellant approached the High Court, *inter-alia,* praying for suitable disciplinary action against respondent No.2; adequate compensation; damages and costs by the said respondent from his own pocket.

5. As aforesaid, the High Court, vide impugned judgment has allowed the writ petition, *inter alia*, observing thus :

> "We therefore, find that there was no justification for issuance of non-bailable warrant on 7th August, 2002 merely because the petitioner had remained absent in Criminal Case No. 163/P/2000 (*sic*) by the Metropolitan Magistrate. The Magistrate could have issued either a notice or a bailable warrant depending upon the

facts revealed from the records. Once the warrant was cancelled on 12th August, 2002, it was necessary for the Court to immediately communicate the same to the concerned Police authority so that no inconvenience could have been caused to the person against whom the warrant was initially issued. Once the warrant was sought to be executed on holiday and the concerned police officer was categorically informed that the warrant had already been cancelled and the police officer being fully aware of the circumstances and nature of the case in which warrant had been issued, it was necessary for the police officer to ascertain and to find out whether the warrant which was sought to be executed was still enforceable or had already been cancelled and not to rush to execute the warrant in those circumstances and that too on a holiday. Having produced the necessary documents confirming the cancellation of the warrant much prior to the date on which it was sought to be (*sic*) enforced, it was the duty of the police officer to tender the necessary apology to the petitioner for executing such warrant on the holiday, and the concerned officer having failed to tender the apology it apparently shows that he had not performed his duty in the manner he was required to perform as a responsible police officer. Even the affidavit filed by the respondent No. 2 nowhere discloses any repentance for having executed the warrant which was already cancelled. It is a clear case of unnecessary interference with the liberty of a citizen."

6. Thus, having failed to get the desired relief from the High Court, the appellant is before us in this appeal.

7. Arguing the case in person, it was strenuously urged by the appellant that having regard to the nature of offence alleged against him, in the first place, the Additional Chief Metropolitan Magistrate erred in law in issuing non-bailable warrant in a routine manner, without application of mind, merely because the appellant had failed to appear in court on 7th August 2002. It was asserted that since neither Section

70 nor Section 71 of the Code of Criminal Procedure, 1973 (for short "the Code") uses the expression "non-bailable" a Magistrate is not authorised to issue non-bailable warrant of arrest even when an accused fails to appear in the court. It was submitted that having held that the respondent No.2 was guilty of misconduct, the High Court failed to punish the said respondent under Sections 342 and 345 of the IPC. It was argued that the misconduct of respondent No.2 was so high that he should have been forthwith suspended from his job and ordered to be tried in a competent criminal court. According to the appellant, the direction of the High Court asking respondent No.2 to pay an amount of `2,000/- by way of cost to the appellant was no justice at all and if a strict action is not taken against such delinquent officers, they will continue to disregard the orders of the courts with impunity.

8. *Per contra,* Mr. Jay Savla, learned counsel appearing for respondent No.2 submitted that since the appellant was unable to furnish any document or order to establish that non-bailable warrant issued against him by the court had been cancelled, the police authorities were left with no option and in fact were duty bound to execute the same. It was also urged that, as per the prevalent practice, whenever any non-bailable warrant is cancelled by the court, either memo or order

addressed to the Senior Inspector of Police of the concerned police station is issued and forwarded directly to the concerned police station with a direction to return the said warrant to the court. But in the present case no such memo or order in writing had been received at the police station on or before 15th August 2002, when it was executed. Learned counsel submitted that the said respondent having performed his duty *bona fide* and in good faith, in pursuance of order issued by the court having jurisdiction, the said respondent had not committed any illegal act warranting any action against him.

9. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The Courts have to be extra-cautious and careful while directing issue of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one

hand, and the State on the other. Indeed, it is a complex exercise. As Justice Cardozo puts it "on the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice." 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.***[1]).

10. In ***Inder Mohan Goswami & Anr.*** *Vs.* ***State of Uttaranchal & Ors.***[2]**,** a Bench of three learned Judges of this Court cautioned that before issuing non-bailable warrants, the Courts should strike a balance

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

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:

> **"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.
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> **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."

11. We deferentially concur with these directions, and emphasize 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 behavioral 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.

12. 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.

13. We shall now advert to a more anxious point, viz. the conduct of respondent No.2, at whose direction the warrant was executed. It needs no emphasis that any form of degrading treatment would fall within the inhibition of Article 21 of the Constitution. In the present case, respondent No.2 was aware that the non-bailable warrant issued on account of failure on the part of the appellant to attend the court proceedings on 7th August 2002, was returnable only on 31st October 2002. Undoubtedly, respondent No.2 was duty bound to execute the warrant as expeditiously as possible but we are unable to fathom any justifiable reason for the urgency in executing the warrant on a National holiday, more so when it had been issued more than a week ago and even the complaint against the appellant was in relation to the offence punishable under Section 324 of the IPC. The complaint related to the year 2000. At the relevant time, the offence punishable under Section 324 of the IPC was a bailable offence. It is apparent from the record that the warrant was executed at the behest of the complainant in order to denigrate and humiliate the appellant at a public place, in public view, during the course of Independence day celebrations at Radio Club. We are convinced that respondent No.2, in collusion with the complainant, played with the personal liberty of the appellant in a high handed manner. The unfortunate sequel of an unmindful action on the part of respondent No.2 was that the

appellant, a practicing Advocate, with no criminal history, remained in police custody for quite some time without any justification whatsoever and suffered unwarranted humiliation and degradation in front of his fellow members of the Club. Regrettably, he lost his freedom though for a short while, on the Independence day. Here also, we agree with the High Court that respondent No.2 did not perform his duty in the manner expected of a responsible police officer. As a matter of fact, being the guardian of the liberty of a person, a heavy responsibility devolved on him to ensure that his office was not misused by the complainant to settle personal scores. The so-called urgency or promptness in execution led to undesirable interference with the liberty of the appellant. Such a conduct cannot receive a judicial imprimatur.

14. That takes us to the core issue, namely, whether the appellant is entitled to any compensation for the humiliation and harassment suffered by him on account of the wrong perpetrated by respondent No.2, in addition to what has been awarded by the High Court. As aforesaid, the grievance of the appellant is that imposition of a fine of `2,000/- on respondent No.2 is grossly inadequate. His prayer is that in addition to an adequate amount of compensation, respondent No.2

should also be prosecuted and proceeded against departmentally for his wrongful confinement.

15. It is trite principle of law that in matters involving infringement or deprivation of a fundamental right; abuse of process of law, harassment etc., the courts have ample power to award adequate compensation to an aggrieved person not only to remedy the wrong done to him but also to serve as a deterrent for the wrong doer.

16. In ***Rudul Sah*** *Vs.* ***State of Bihar & Anr.***[3], Y.V. Chandrachud, CJ, speaking for a Bench of three learned Judges of this Court had observed thus:

> "One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt."

17. In ***Bhim Singh, MLA*** *Vs.* ***State of J & K & Ors.***[4], holding illegal detention in police custody of the petitioner Bhim Singh to be violative of his rights under Articles 21 and 22(2) of the Constitution, this Court, in exercise of its power to award compensation under Article 32, directed the State to pay monetary compensation to the

[3] (1983) 4 SCC 141
[4] (1985) 4 SCC 677

petitioner. Relying on ***Rudal Sah*** (supra), O. Chinnappa Reddy, J. echoed the following views:

> "When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation".

18. In ***Nilabati Behera (Smt) Alias Lalita Behera*** *Vs.* ***State of Orissa & Ors.***[5]*,* clearing the doubt and indicating the precise nature of the constitutional remedy under Articles 32 and 226 of the Constitution to award compensation for contravention of fundamental rights, which had arisen because of the observation that "the petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial" in ***Rudul Sah*** (supra), J.S. Verma, J. (as His Lordship then was) stated as under:

> "It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign

[5] (1993) 2 SCC 746

> immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah* and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights."

In the same decision, in his concurring judgment, Dr. A.S. Anand, J. (as His Lordship then was), explaining the scope and purpose of public law proceedings and private law proceedings stated as under:

> "The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the

> wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

19. The power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are thus, well-established. However, the question now is whether on facts in hand, the appellant is entitled to monetary compensation in addition to what has already been awarded to him by the High Court. Having considered the case in the light of the fact-situation stated above, we are of the opinion that the appellant does not deserve further monetary compensation.

20. It is true that the appellant not only suffered humiliation in the public gathering, and remained in judicial custody for some time but we feel

that for what he had undergone on 15th August 2002, some blame lies at his door as well. Being a practicing Advocate himself, the appellant was fully conversant with the court procedure and, therefore, should have procured a copy of memo/order dated 12th August 2002, whereby the non-bailable warrant was cancelled by the court. As noticed above, admittedly, the appellant applied and obtained a copy of such order only on 16th August 2002. Though the conduct of respondent No.2 in arresting the appellant, ignoring his plea that the non-bailable warrant issued by the court in a bailable offence had been cancelled, deserves to be deplored, yet, strictly speaking the action of respondent No.2 in detaining the appellant on the strength of the warrant in his possession, perhaps motivated, cannot be said to be *per se* without the authority of law. In that view of the matter, in our opinion, no other action against respondent No.2 is warranted. He has been sufficiently reprimanded.

21. The last issue raised that remains to be considered is whether the Courts can at all issue a warrant, called a "non-bailable" warrant because no such terminology is found in the Code as well as in Form 2 of the Second Schedule to the Code. It is true that neither Section 70 nor Section 71, appearing in Chapter VI of the Code, enumerating the processes to compel appearance, as also Form 2 uses the expression

like “non-bailable”. Section 70 merely speaks of form of warrant of arrest, and ordains that it will remain in force until it is cancelled. Similarly Section 71 talks of discretionary power of Court to specify about the security to be taken in case the person is to be released on his arrest pursuant to the execution of the warrant issued under Section 70 of the Code. Sub-section (2) of Section 71 of the Code specifies the endorsements which can be made on a warrant. Nevertheless, we feel that the endorsement of the expression “non-bailable” on a warrant is to facilitate the executing authority as well as the person against whom the warrant is sought to be executed to make them aware as to the nature of the warrant that has been issued. In our view, merely because Form No.2, issued under Section 476 of the Code, and set forth in the Second schedule, nowhere uses the expression bailable or non-bailable warrant, that does not prohibit the Courts from using the said word or expression while issuing the warrant or even to make endorsement to that effect on the warrant so issued. Any endorsement/variation, which is made on such warrant for the benefit of the person against whom the warrant is issued or the persons who are required to execute the warrant, would not render the warrant to be bad in law. What is material is that there is a power vested in the Court to issue a warrant and that power is to be exercised judiciously depending upon the facts and circumstances of each case.

Being so, merely because the warrant uses the expression like "non-bailable" and that such terminology is not to be found in either Section 70 or Section 71 of the Code that by itself cannot render the warrant bad in law. The argument is devoid of substance and is rejected accordingly.

22. In view of the aforegoing discussion, no ground is made out warranting our interference with the impugned judgment of the High Court. We confirm the judgment and dismiss the appeal accordingly, but with no order as to costs.

23. However, before parting with the judgment, we feel that in order to prevent such a paradoxical situation, we are faced with in the instant case, and to check or obviate the possibility of misuse of an arrest warrant, in addition to the statutory and constitutional requirements to which reference has been made above, it would be appropriate to issue the following guidelines to be adopted in all cases where non-bailable warrants are issued by the Courts:-

(a) All the High Court shall ensure that the Subordinate Courts use printed and machine numbered Form No.2 for issuing warrant of arrest and each such form is duly accounted for;

(b) Before authenticating, the court must ensure that complete particulars of the case are mentioned on the warrant;

(c) The presiding Judge of the court (or responsible officer specially authorized for the purpose in case of High Courts) issuing the warrant should put his full and legible signatures on the process, also ensuring that Court seal bearing complete particulars of the Court is prominently endorsed thereon;

(d) The Court must ensure that warrant is directed to a particular police officer (or authority) and, unless intended to be open-ended, it must be returnable whether executed or unexecuted, on or before the date specified therein;

(e) Every Court must maintain a register (in the format given below), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;

(f) No warrant of arrest shall be issued without being entered in the register mentioned above and the concerned court shall periodically check/monitor the same to confirm that every such process is always returned to the court with due report and placed on the record of the concerned case;

(g) A register similar to the one in clause (e) supra shall be maintained at the concerned police station. The Station House Officer of the concerned Police Station shall ensure that each warrant of arrest issued by the Court, when received is duly entered in the said register and is formally entrusted to a responsible officer for execution;

(h) Ordinarily, the Courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long;

(i) On the date fixed for the return of the warrant, the Court must insist upon a compliance report on the action taken thereon by the Station House Officer of the

concerned Police Station or the Officer In-charge of the concerned agency;

(j) The report on such warrants must be clear, cogent and legible and duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in case of misuse;

(k) In the event of warrant for execution beyond jurisdiction of the Court issuing it, procedure laid down in Sections 78 and 79 of the Code must be strictly and scrupulously followed; and

(l) In the event of cancellation of the arrest warrant by the Court, the order cancelling warrant shall be recorded in the case file and the register maintained. A copy thereof shall be sent to the concerned authority, requiring the process to be returned unexecuted forthwith. The date of receipt of the unexecuted warrant will be entered in the aforesaid registers. A copy of such order shall also be supplied to the accused.

Format of the Register

S. No.	The number printed on the form used	Case title and particulars	Name & particulars of the person against whom warrant of arrest is issued (accused/ witness)	The officer/ person to whom directed	Date of judicial order directing Arrest Warrant to be issued	Date of issue	Date of cancellation, if any	Due date of return	Report returned on	The action taken as reported	Remarks

24. We expect and hope that all the High Courts will issue appropriate directions in this behalf to the Subordinate Courts, which shall endeavour to put into practice the aforesaid directions at the earliest, preferably within six months from today.

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(D.K. JAIN, J.)

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(H.L. DATTU, J.)

NEW DELHI;
SEPTEMBER 9, 2011.
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