

A BRIEF NOTE ON ISSUANCE OF NON-BAILABLE WARRANTS AND ITS EXECUTION

By

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Introduction

To secure the presence of the accused, the Court issues warrant of arrest during the pendency of trial. Warrant is an order addressed to a certain person directing him to arrest the accused and produce him before the Court. The warrant may be issued to Police Officer or any other person to execute the same. As per Section 70 of Cr.P.C., every warrant of arrest issued by the Court under Code of Criminal Procedure shall be signed by the Presiding Officer of such Court and shall bear seal of the Court and every such warrant shall remain in force until it is cancelled by the Court which issued or until it is executed. The Magistrate authorized to issue warrant for detention of person who ensures that every warrant, authorizing detention to specifies the age of person to be detained.

Types of Warrants

Though, there is no mention of Bailable and Non bailable warrants in the code, Warrants are of two kinds, Bailable and Non-bailable. Section 71 deals with bailable warrants. As per Section 71(1), any Court issuing a warrant for the arrest of any person may at its discretion direct by an endorsement on the warrant that if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody. The endorsement shall State the number of sureties, amount in which they and the person for whose arrest warrant issued and to be respectively bound, the time

at which he attend before Court. Whenever security is taken under this section, the officer to whom warrant is directed shall forward the bond to the Court.

Non-bailable warrant is other than the bailable warrant.

When NBW can be issued against the accused?

In a reported judgment between *Inder Mohan Gowsamy and another v. State of Uttaranchal and others*, reported in (2007) 12 SCC 1, the Hon'ble Apex Court held that Non-bailable warrant normally not to be issued if person or accused could be secured. At Para 51 of the judgment the Hon'ble Apex Court held that issuance of Non-bailable warrant 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.

The Hon'ble Apex Court further held that non-bailable warrant should be issued to bring the person to Court when summons and bailable warrant would be unlikely issued. This could be reasonable to believe that the person willing to appear in Court or the police authorities are unable to find the person to serve him with summons or it is considered that the person could harm someone if not placed in to the custody immediately. The Hon'ble Apex Court held that sometimes in the larger interest of the public, State becomes absolutely imperative to curtail the freedom of individual for a certain period only; this non-bailable warrants should be issued.

Whether NBW can be issued against Witnesses?

In a reported judgment between *K. Srinivas v. State of A.P.*, reported in 2003 (1) ALD (CrI) 53, the Hon'ble High Court held that issuing of NBW against the petitioner/witness is not correct. The Hon'ble High Court further held as per Section 350 Cr.P.C., when a witness fails to attend the Court disobeying the orders issued warrant for the same, found absented himself with a just cause a maximum punishment can be imposed is Rs.100/- and nothing more.

The Hon'ble High Court further held that "Administration of justice is very solemn duty officers administering justice, especially criminal justice which involves the liberty and reputation of individuals should exercise the powers, especially the power to sending persons to judicial custody, vested on them with great care and circumspection because personal liberty of individuals, which is a fundamental right enshrined in the Constitution is involved. Since Article 21 of the Constitution mandates that no person shall be deprived of his life and personal liberty except in accordance with the procedure established by law. Care should be taken to see if person ordered to be sent to judicial remand can be deprived of his liberty under the provision of nay statue or not?"

Whether the presence of accused is necessary at the time of filing recall of NBW issued by the Court?

In a reported judgment 2000(1) LS 78 between *Ramakrishna Agencies, Guntur v. State of A.P.*, the Hon'ble High Court held that no provision of law is brought to notice that accused should be present when an application is filed for withdrawing non-bailable warrant.

In a reported judgment between *Shaik Yousuf v. State of A.P.*, 2001 (2) ALT (CrI)

270: The Hon'ble High Court held that "In ordinary course of warrant should have recalled if the Court is convinced that his absence on earlier occasion was not willful. Even otherwise if for any reason the petitioner is brought by executing a warrant issued against him, still he can be enlarged on bail. In that case the contention of the petitioner/accused that he was undergoing medical treatment.

In 2007 (1) ALT (CrI) 180, between *M. Sainath v. Ezgaf Pentawa*, the Hon'ble High Court held that petitioner is directed to appear before the Court on the next date of hearing and file petition under Section 70(2) Cr.P.C. to recall the said warrant.

In a reported judgment in between *Mita Labs Pvt. Ltd. v. G.E. Wide Consumer Financial Services Ltd.* reported in 2001 (2) ALD 489, the Hon'ble High Court held that the logic of learned Magistrate that because the accused had not executed any bonds earlier, hence it was not possible to recall NBW and filed petition under Section 70(2) Cr.P.C. is difficult to be accepted. Order quashed in NBW cancelled, petitioner is directed to appear before the Court on the next date of hearing and on such appearance they shall be bound over terms as the Magistrate considers.

In a reported judgment between *TMT Kaladi v. State*, reported in 2006 (CrI) IJ. 2053:- The Hon'ble High Court held that non-bailable warrant pending against petitioner, hearing had been posted for furnishing copies of final report and documents to her. Her presence was therefore required. Unless she makes appearance and warrant is recalled her application under Section 317 Cr.P.C. to condone her absence and under Section 205 to allow or to appearance by pleader cannot be entertained.

In a reported judgment between *Yenkey Drugs and Pharmaceuticals Pvt. Ltd., and another*

v. Bhagya Nagar Chlorides reported in 2003 (1) ALD 119 (AP), the Hon'ble High Court held that when the accused is absent in the Court on the hearing date, file an application to dispense with personal appearance application dismissed and NBW issued. Application filed to cancel the same also dismissed. The Magistrate did not exercise his jurisdiction. NBW is cancelled and accused is directed to appear in the Court on the next date of hearing.

In a reported judgment between *Ch. Venkata Reddy v. State of A.P.*, reported in 2008 (3) APLJ 85, the Hon'ble High Court held that if the accused failed to appear in spite of service of summons. Hence non bailable warrants are issued. The accused filed application to recall NBW and also to dispense with their personal attendance. It is discretion of the learned Magistrate to dispense with personal appearance. The accused must appear at the time of framing of charges under Section 239 Cr.P.C. and examination under Section 313 Cr.P.C. and also on the date of pronouncement of the judgment.

In a reported judgment between *A. Venugopal v. State of A.P. and another* reported in 1999 (4) ALD 449, the Hon'ble High Court of A.P. held that when a notice was returned by an endorsement by the postal authorities which may amounts to refusal to receive letter. The Hon'ble Court held that it is possible that the letter might have been tendered to a wrong person who might have refused to claim it as not bound addressed to him. Under the circumstances the NBW issued on petitioner/accused has bound recall and the petitioner shall attend the Court on the next date of hearing.

In a reported judgment between *Bhagvan Premchand v. State of A.P.* reported in 1998 (1) ALT (Crl) 110 A.P., the Hon'ble High Court held that the Magistrate should shed wrong practice of issuing NBW, the moment the accused failed to appear before the Court

without giving an opportunity to explain the circumstances under which the accused failed to appear in the Court and in the light of the language employed in Section 73 of Cr.P.C. NBW can be issued sparingly that to after coming to a conclusion that there is no other way to secure the presence of accused.

In a reported judgment between *Raghuvansh Dewanchand Bhasin v. State of Maharashtra and another* reported in 2008 Crl. LJ 2127, The Hon'ble Bombay High Court held that power of jurisdiction of Court to issue proper warrant against an accused on his bail to attend the Court, such power has to be exercised judicially and not arbitrarily. It further held that the Magistrate could have issued either notice or bailable warrant depending upon the facts. The High Court directed the police officer to pay costs of Rs.2000/- from his own account.

The facts in brief that a non bailable warrant issued against him returnable on 31.10.2002, the appellant Raghuvansh appeared and filed a petition to recall NBW and warrant was cancelled. On 15.8.2002 the police arrested the appellant, even though he stated that NBW recalled, and produced before the Magistrate and the Magistrate directed the release of accused.

Guidelines issued by the Apex Court

In a reported judgment between *Raghuvansh Dewanchand Bhasin v. State of Maharashtra and another*, AIR 2011 SC 3393, the Hon'ble Apex Court issued guidelines to the subordinate Courts at the time of issuance of NBWs. The Hon'ble Apex Court directed all of the subordinate Courts to use printed and Machine No. and Form No.2 for issuing warrant of arrest. The Court must ensure that complete particulars of the cases are mentioned in the warrant. The Presiding Judge of the Court should put his full and legible signatures in the particulars and also ensuring that Court seal appearing with complete address of the Court,

prominently endorsed thereon. The Court must ensure that warrant is directed to a particular police officer, it must be returnable whether executed or non-executed on or before the date specified therein. Every Court must maintain a register in which warrant of arrest issued must be entered and chronological serial number of such entry reflected on the top right hand of the process. No warrant of arrest shall be issued without being entered in the register. A register similar one shall be maintained at concerned police station. The Courts should not give a long time for return of execution of warrants. On the date fixed for return of warrant, the Court must insist upon for compliance of report on the action taken by thereon by the Station House Officer of concerned Police Station. The report of such warrant must be cogent and legible duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in case of misuse. In the event of warrant for execution beyond satisfaction Court issuing it procedure laid down under Sections 78 and 79 Cr.P.C. a Court must be strictly and scrupulously followed. In the event of cancellation of arrest warrant by the Court, the order of cancelling warrant shall be recorded in the case file and register maintained. A copy thereof shall be sent to the concerned authorities requiring the process to be returned unexecuted forthwith. The date of return of unexecuted warrant will be entered in the above said register. A copy of such order shall also be supplied to the accused.

Whether Police can release the accused by taking bonds when NBW is executed?

Yes. In cases where the offence is bailable one.

As per Section 81 of Cr.P.C. the Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court. Provided that if the offence is bailable and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent of Police, or Commissioner or a direction has been endorsed under Section 71 on the warrant and such person is ready and willing to give security by such direction, the Magistrate, District Superintendent of Police or Commissioner shall take such bail or security as the case may be and forward the bond to the Court which issued the warrant. Provided further that if the offence is non-bailable one, it shall be lawful for Chief Judicial Magistrate (subject to the provisions of Section 437) or the Session Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in subsection (2) of Section 78, to release such person on bail.

Conclusion

Therefore I am of the view that the Courts shall exercise discretion before issuance of non- bailable warrants. The police also check and verify whether the NBWs recalled prior to its execution. Whenever the petitioner/accused files a petition under Section 70(2) Cr.P.C for recall or cancellation of NBW, he shall file process and the Court shall send a memo to the concerned SHO with a direction to return the warrant to the Court.