



2026:AHC:58860

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 9832 of 2026

Vimlesh Patel And 3 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Ashok Kumar Singh, Pratibha Singh
Counsel for Opposite Party(s) : G.A.

Court No. - 82

HON'BLE PADAM NARAIN MISHRA, J.

1. Heard learned counsel for the applicant and learned AGA for the state.

2. The present application has been filed by the applicants seeking quashing of impugned order dated 31.05.2023 passed in the S T No. 841 of 2014 arising out Case Crime No. 165 of 2011 under sections 147, 148, 149, 307 and 506 of IPC, P.S. Ghoorpur, District - Allahabad.

3. Learned counsel for the applicants submits that in the present case trial court issued NBW on 31.05.2023 against the applicants. He further submitted that the applicants are continuously appearing before the court. He further submitted that they have no knowledge about the the dated fixed 31.05.2023, hence they could not appear before the court. He further submitted that prior to the order dated 31.05.2023, no charge has been framed against the applicants. He further submitted that on bare perusal of order-sheet dated 31.05.2023, it appears that trial court has only mentioned that Dwarika Prashad, Vimlesh, Pramod Patel, Suresh Kumar Yadav, Lal Bahadur Sonkar and Dayashankar Yadav are accused while charges have not been framed against him. Therefore, NBW has been issued against accused persons. He lastly submitted that the impugned order has been passed in mechanical manner without following the due process of law.

4. Having considered the submission of the learned counsels of the

parties and perused the material available on records, it appears that the concerned court has passed the impugned order 31.05.2023 without the application of judicial mind in a very hasty manner in complete disregard of the settled principles of the law. The impugned order passed against the applicants does not reflect the objective satisfaction recorded by the trial court for issuing the NBW at the very first instance without recouring other modes of securing the presence of the accused. At this juncture, it is inevitable to discuss about the Section 90 of the BNSS. Section 90 of the BNSS is as under:

"Section 90 - Issue of warrant in lieu of, or in addition to, summons

A Court may, in any case in which it is empowered by this Sanhita to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest;

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure."

5. On bare perusal of the aforesaid section, it is clear that the general course of action for the appearance of any person before the court may be deviated only when the court has reason to believe that the he has absconded or will not obey the summons. The impugned order does not disclose the compliance of above noted requirement. The issuance of an NBW is a serious matter that impacts an individual's personal freedom as protected by Article 21 of the Indian Constitution. The authority to issue a warrant, whether it is bailable or not, must therefore be used carefully and not arbitrarily. Nonetheless, the courts have made it clear that their discretion is largely focused on ensuring the person's presence and preventing the criminal justice system from being impeded. An NBW is a very important legal action that is to be taken as a last resort when other means of ensuring a witness's presence have failed. Before issuing a warrant, a judge will

consider factors like the witness's credibility, the importance of their testimony, how relevant their evidence is to your case, and if there are mitigating circumstances that could have caused the witness to miss the hearing.

6. The Apex Court in the case of ***re: Inder Mohan Goswami and another vs. State of Uttaranchal and others reported in (2007) 12 SCC 1*** has observed the mechanism as to how the liberty of any person may be curtailed inasmuch as every citizen has got fundamental right of his liberty under Article 21 of the Constitution of India. The relevant paragraphs of the aforesaid judgment is reproduced as under:-

"When non-bailable warrants should be issued.

53. 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; 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.

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 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.

56. 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.

57. 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."

7. The inherent powers under Section 528 BNSS are to be exercised to prevent abuse of process of court and to secure ends of justice **(State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335)**. The matter at hand is the fit case for the exercise of the inherent powers of the High Court vested under section 528 of BNSS.

8. The impugned order dated 31.05.2023 passed in the S. T. No. 841 of 2041 arising out Case Crime No. 165 of 2011 under sections 147, 148, 149, 307 and 506 of IPC, P.S. Ghoorpur, District - Allahabad is hereby set aside. The Concerned Trial Court is directed to pass a fresh order in the light of the observation made hereinabove.

March 19, 2026
Israr

(Padam Narain Mishra,J.)