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VIKAS

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 1190 of 2013)

AUGUST 16, 2013

B

[H.L. DATTU AND M.Y. EQBAL, JJ.]

C

Code of Criminal Procedure, 1973 - s.319 - Abduction of girl - Three accused - PW4 filed application u/s.319 CrPC for trial of appellant alongwith other accused persons - Trial Court took cognizance and summoned appellant through issuance of non-bailable warrant - Appellant filed application for converting the non-bailable warrant into bailable warrant - Trial Court rejected the application - Order confirmed by High

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Court - Whether the attendance of appellant could have been best secured by issuing a summon simplicitor or a bailable warrant instead of a non-bailable warrant in an application u/s.319 CrPC - Held: s.319 CrPC demands more circumspection by the Trial Court while exercising its powers

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since it confers an extraordinary power and should be used by the court very sparingly thereby ensuring that principles of rule of law and basic tenets of criminal law jurisprudence are not vitiated - Issuance of non-bailable warrant in the first instance without using the other tools of summons and

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bailable warrant to secure attendance of appellant impaired his personal liberty - 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 - The court in all

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circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued - Direction given that summons be issued against the appellant for his appearance instead of non-bailable warrant - Penal Code, 1860 - ss. 363, 366 and 376.

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Inder Mohan Goswami; 2007 12 SCC 1: 2007 (10) SCR 847; *Raghuvansh Dewanchand Bhasin vs. State of Maharashtra and Anr.* (2012) 9 SCC 791: 2007 (10) SCR 847 *State of U.P. vs. Poosu and Anr.*; 1976 3 SCC 1: 1976 (3) SCR 1005 - referred to. A

Case Law Reference: B

2007 (10) SCR 847 referred to Para 14

2007 (10) SCR 847 referred to Para 14

1976 (3) SCR 1005 referred to Para 15 C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1190 of 2013.

From the Judgment and Order dated 04.04.2013 of the High Court of Judicature for Rajasthan, Bench at Jaipur, in S.B. Criminal Misc. Petition No. 1080 of 2013. D

Sushil K. Jain, Puneet Jain, Anas M. Riyaz, Pratibha Jain for the Appellant.

Dr. Manish Singhvi, AAG, Irshad Ahmad for the Respondent. E

The following order of the Court was delivered

O R D E R F

1. Leave granted.

2. This appeal is directed against the order passed by the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in S.B. Criminal Misc. Petition No. 1080 of 2013 dated 4th April, 2013, whereby the High Court has dismissed the petition filed by the appellant under section 482 of Criminal Procedure Code, 1973 (for short, "the Cr.P.C."). G

3. The Facts in brief are: - The incident occurred on H

A 01.12.2011 at about 4.00 a.m. PW-4, the complainant had lodged an FIR before the Police Station at Singhana, District Jhunjhunu to the effect that PW5, the daughter of the Complainant, Sonu was abducted by the accused persons namely Deshram, Vikash, Ravi Kumar and Amit Kumar. On the
B fateful day, PW-5, had gone out of her house, when the appellant along with the other accused persons hatched a conspiracy to forcibly abduct her and in pursuance of the same abducted PW-5.

C 4. The FIR was registered and after completion of the investigation, the investigating agency had filed a charge-sheet against the accused, Amit Kumar (A1) for the offences under Sections 363, 366 and 376 of Indian Penal Code ("the IPC" for short) and Ravi Kumar (A2) and Ajit (A3) for the offences under Sections 363, 366(A) and 120B of the IPC. The Trial
D Court, thereafter, commenced with the trial against A1, A2 and A3 respectively.

E 5. During the course of trial, the Trial Court appreciated the evidence available on record and framed charges against A1 under Sections 363, 366 and 376 and under Sections 363, 366(A) and 120B of the IPC against A2. Thereafter, PW4, filed an application before the Trial Court under Section 319 of the Cr.P.C. for the trial of the appellant along with the other accused persons for having been involved in the commission of the
F offence.

G 6. The Trial Court placing reliance on the evidence produced in the course of the trial has come to the conclusion that the court is satisfied that the appellant has committed an offence for which the appellant can be tried along with the other accused persons and therefore had taken cognizance for the offences under Sections 363, 366(A), 120B and 376(2)(g) of the IPC against the appellant herein and were summoned through an issuance of a non-bailable warrant.

H 7. Being aggrieved by the issuance of the non-bailable

warrant, the appellant filed an application before the Trial Court for converting the non-bailable warrant into bailable warrant. The Trial Court, by its order dated 04.03.13 rejected the application of the appellant.

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8. Aggrieved by the order of the Trial Court, the appellant had filed an appeal before the High Court. The High Court after re-consideration confirmed the order of the Trial Court.

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9. It is the correctness or otherwise of the judgment and order passed by the High Court which is called in question by the appellant in this appeal.

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10. Heard learned counsel for the parties to the lis.

11. The learned counsel appearing for the appellant, would submit that the Trial Court, to seek attendance of the appellant and the other accused persons had issued non-bailable warrants instead of bailable warrants which was not justified.

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12. The only question for consideration before us is whether in the circumstances of the case, the attendance of the appellant could have been best secured by issuing a summon simplicitor or a bailable warrant instead of a non-bailable warrant in an application under Section 319 of the Cr.P.C.

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13. A Perusal of Section 319 of the Cr.P.C. would clearly indicate that on the objective satisfaction of the court a person may be 'arrested' or 'summoned' as the circumstances of the case may require if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons. The court should exercise judicial discretion on a consideration of the totality of the facts and circumstances of a given case and in a manner where proper procedures are followed that are fundamental to the right of fair trial of the accused. The section demands more circumspection by the Trial Court while exercising its powers since it confers

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A an extraordinary power and should be used by the court very sparingly thereby ensuring that principles of rule of law and basic tenets of criminal law jurisprudence are not vitiated.

B 14. The Constitution of India is the grundnorm- the paramount law of the country. All other laws derive their origin and are supplementary and incidental to the principles laid down in the Constitution. Therefore, Criminal Law also derives its source and sustenance from the Constitution. The Constitution, on one hand, guarantees the Right to Life and Liberty to its citizens under Article 21 and on the other hand imposes a duty and an obligation on the Judges while discharging their judicial function to protect and promote the liberty of the citizens. The issuance of non-bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of such a person would
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D impair the personal liberty guaranteed to every citizen under the Constitution. This position is settled in the case of Inder Mohan Goswami; 2007 12 SCC 1 and in the case of *Raghuvansh Dewanchand Bhasin vs. State of Maharashtra and Anr*; (2012) 9 SCC 791 wherein it has been observed that personal
E liberty and the interest of the State Civilized countries is the most precious of all the human rights. The American Declaration of Independence 1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and
F Political Rights 1966 all speak with one voice - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law. The issuance of non-bailable warrant involves interference with personal liberty. Arrest and
G imprisonment means deprivation of the most precious right of an individual. Therefore, this demands that the courts have to be extremely careful before issuing non-bailable warrants.

H 15. In order to examine the reasoning of the Trial Court,

the case is to be understood in its own facts and circumstances. A
In the instant case, the Trial Court after appreciating the
evidence available had reasonable satisfaction from the
evidence already collected during the trial that the appellant had
committed an offence along with the other accused who had
undergone the Trial and therefore issued a non-bailable warrant B
to seek the attendance of the appellant-herein under an
application of Section 319 of the Cr.P.C. To appreciate the
present case, it is pertinent to discuss the meaning of 'bailable
offences' and 'non-bailable offences' and the circumstances in
which a non-bailable warrant can be issued. In the legislative C
history for the purposes of bail, the term 'bailable' and 'non-
bailable' are mostly used to formally distinguish one of the two
classes of cases, viz. 'bailable' offences in which bail may be
claimed as a right in every case whereas the question of grant
of bail in non- bailable offences to such a person is left by the D
legislature in the court's discretion to be exercised on a
consideration of the totality of the facts and circumstances of
a given case. The discretion has, of course, to be a judicial one
informed by tradition methodized by analogy, disciplined by
system and sub-ordinated to the primordial necessity of order E
in social life. Another such instance of judicial discretion is the
issue of non-bailable warrant in a complaint case under an
application of Section 319 of the Cr.P.C. The power under
Section 319 of the Cr.P.C being discretionary must be
exercised judiciously with extreme care and caution. The court
should properly balance both personal liberty and societal F
interest before issuing warrants. There cannot be any straight-
jacket formula for issuance of warrants but as a general rule,
unless an accused 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. The conditions for the issuance G
of non-bailable warrant are re-iterated in the case of *Inder
Mohan Goswami* (Supra) and in the case of *State of U.P. vs.
Poosu and Anr*, 1976 3 SCC 1, wherein it is mentioned that
Non-bailable warrant should be issued to bring a person to
court when summons or bailable warrants would be unlikely to H

A have the desired result. This could be when firstly it is reasonable to believe that the person will not voluntarily appear in court; or secondly that the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 of the Cr.P.C. would extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case.

C 16. The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued.

D 17. In view of the above, we modify the orders passed by the Trial Court and confirmed by the High Court, and direct that summons be issued against the appellant for his appearance instead of non-bailable warrants which were ordered to be issued against him.

E 18. The Criminal appeal is disposed of accordingly.

Ordered accordingly.

B.B.B.

Appeal disposed of.