

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 1652 of 2021

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RADHAKRISHNA SARMA PASUMARTY THROUGH MEGHNA SARMA
PASUMARTY

Versus

THE ASSISTANT DIRECTOR, DIRECTORATE OF ENFORCEMENT

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Appearance: MR ARJUN M JOSHI(11247) for the Applicant(s) No. 1

MR S M VATSA(6000) for the Applicant(s) No. 1

MR DEVANG VYAS(2794) for the Respondent(s) No. 1

MR MANAN MEHTA, APP for the Respondent(s) No. 2

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CORAM: **HONOURABLE MR. JUSTICE B.N. KARIA**

Date : 31/03/2021

ORAL ORDER

Rule, returnable forthwith. Learned APP waives service of notice of Rule for and on behalf of the respondent-State and Mr.Devang Vyas, learned Additional Solicitor General of India waives service of notice of Rule for and on behalf of respondent no.1.

By way of present application, the applicant has prayed for the following relief(s):

- (I) *Be pleased to admit and allow this application.*
- (II) *Be pleased to quash and set aside the issuance of non-bailable warrant issued pursuant to the impugned order dated 21.01.2021 below Exh.1 in PMLA Case No.1 of 2021 passed by the learned Designated Judge under the Prevention of Money Laundering Act, 2002 and Principal District Judge, Ahmedabad (Rural), Mirzapur, Ahmedabad.*
- (III) *Be pleased to direct the Ld. Trial Court to mark the appearance of the applicant either in person on Video-*

conference facility on the subsequent next returnable dates and/or through his advocate.

Interim relief:

- (IV) *During the pendency of the present application, be pleased to stay further consequential steps like issue or re-issuance of warrants or service of non-bailable warrants arising out of the impugned order dated 21.01.2021 qua the present applicants.*
- (V) *Be pleased to pass such other order as deemed fit in the interest of justice.”*

Heard learned advocates for the respective parties and perused the material on record.

Having considered the submissions made by learned advocates for the respective parties as well as learned APP for the respondent-State, it appears that the complaint was filed by respondent no.1 under Sections 3 and 4 of the PMLA Act and learned Designated Judge was pleased to register a complaint under Sections 3 and 4 of the PMLA Act and was pleased to issue summon against respondent no.1 – M/s. Sanket Media Private Limited (represented by the Directors-Shri PVS Sharma) and accused no.2-Shri PVS Sarma who is in judicial custody and further, ordered to issue non-bailable warrant against accused nos.3 and 4. This Court would like to refer the judgment of the Hon'ble Apex Court in the case of ***Inder Mohan Goswami and***

another Vs. State of Uttaranchal and others reported in 2008(1)

GLH 603, wherein the Hon'ble Apex Court has explained when non-bailable warrant should be issued. The Hon'ble Apex Court has observed as under:

“When non-bailable warrants should be issued.

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.

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.

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 nonbailable warrants.

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.

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.”

It appears that before passing the order of issuance of non-bailable warrant against accused nos.3 and 4, 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 issueailable- warrant. In the third instance, when the Court is fully satisfied that the accused is avoiding the Court proceedings intentionally, the process of issuance of the non-ailable warrant should be resorted to. As per the observation of the Hon'ble Apex Court, personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-ailable warrants.

Considering the aforesaid legal position as well as joint request made by learned advocates for the respective parties, non-ailable warrant issued against accused nos.3 and 4 by learned Designated Judge may be converted intoailable warrant. Therefore, in the order passed by the learned Designated Judge dated 21.01.2021 below Exh.1 in PMLA Case No.1 of 2021 in ECIR Number ECIR/01/STSZO/2020, non-ailable warrant against accused nos.3 and 4 would be converted intoailable warrant against accused nos.3 and 4. Rest of the order passed by the Court-below would remain as it is.

With the above observations, present application stands disposed of. Rule is made absolute to the aforesaid extent.

(B.N. KARIA, J)

rakesh/