

ORDER BELOW EXH. NO.27 IN CRI.M.A.NO.209/2025

**Santosh Traders Taradgaon Through Santosh Sadashiv Gaikwad
V/s.
Chatrapati Agro Tech Pvt Ltd. Through Santosh Vitthal Bathe & Ors.**

This is an application filed by non-applicants/accused no.1 and 2 for setting aside non-bailable warrant dated 23.03.2026 in their absenty. According to them, on 23.03.2026 this Court has reissued N.B.W. through S.P. against non-applicants. The order of N.B.W. is passed by Court neglecting to directions of Hon'ble Supreme Court that, first summons, then bailable warrant and then non-bailable warrant ought to have been issued. This Court also misused the process of law in present application. As per Section 421 of Cr. P. C. for recovery of fine amount recovery warrant be sent to the District Collector. Under Section 421 of Cr. P. C. recovery of fine amount N.B.W. can not be issued. The non-applicants further stated that, by issuing N.B.W. order the Court violates the fundamental rights of the non-applicants. The non-applicants also stated that, N.B.W. order did not proper and prayed to recall the N.B.W. order dated 23.03.2026.

2. The applicant/original complainant has filed his say at Exh.No.33. According to him, the accused have filed false application. The applicant has filed present application for execution of judgment and sentence passed in S.C.C.No.945/2020. In that application summons was issued to non-applicants. It was served on non-applicant no.1. Even they could not present in the Court. The non-applicants have filed appeal against judgment of S.C.C. No. 945/2020. In that appeal the non-applicants could not deposited 20% amount for staying the execution of sentence of S.C.C.No.945/2020. Therefore, judgment and sentence of S.C.C.No.945/2020 is in force. There is no stay to the present application. Therefore, N.B.W. order passed by this Court is just

and proper. He prayed to reject the application of accused/non-applicants.

3. Perused application and say. Heard Ld. Advocate of non-applicants and applicant. The present application filed by non-applicants for cancellation of N.B.W. or recalling the order of N.B.W. passed against accused. Both accused/ non-applicants are absent today and they want to cancel their N.B.W. warrant in their absenty. The main ground for cancellation of N.B.W. order stated by non-applicants is that, as per Section 421 of Cr. P. C. for recovery of fine amount recovery warrant be sent to the District Collector. Under Section 421 of Cr. P. C. recovery of fine amount N.B.W. could not be passed. Considering this reason it revealed that, accused/non-applicants seems to be misunderstood the provisions under which this Court has passed N.B.W. order. From record it clearly seen that, this Court passed N.B.W. order below application Exh.5. The application Exh.5 was filed by applicant for execution of sentence which is passed in S.C.C.No.945/2020 against non-applicants. The copy of judgment of S.C.C.No.945/2020 is filed on record. In that judgment both accused/non-applicants were convicted by this Court for an offence punishable u/s 138 of N. I. Act and sentenced to them to suffer simple imprisonment of 1 year and to pay fine of Rs.85,00,000/-. The accused also sentenced to suffer 1 month simple imprisonment in default of payment of fine. Thus, from the judgment of S.C.C.No. 945/2020 it is clear that, the accused/non-applicants were sentenced to suffer simple imprisonment of 1 year.

4. It is admitted position that, accused have preferred an appeal before Hon'ble Additional Sessions Judge, Phaltan against order and judgment of S.C.C.No.945/2020. The Hon'ble Additional Sessions

Court, Phaltan on 11.06.2025 suspended the execution of judgment and sentence of S.C.C.No. 945/2020 on the condition that, both accused jointly or severally to deposit Rs.17,16,000/- in the Court within the period of 1 month. The period for depositing the amount was ended on 11.07.2025. However, accused did not deposited the fine amount in the Hon'ble Additional Sessions Court, Phaltan. It is also admitted position that, till date accused could not comply the order dated 11.06.2025 of Hon'ble Additional Sessions Court, Phaltan. Therefore, the judgment and sentence passed in S.C.C.No.945/2020 is could not be taken as suspended by Hon'ble Additional Sessions Court, Phaltan and it remained in force.

5. The present application i.e. Cri.M.A.No.209/2025 was filed by applicant for execution of judgment and sentence passed in S.C.C.No.945/2020. In that application the applicant in title clause mentioned Section 421 of Cr.PC. and also mentioned 461 of B.N.S.S. It is correct that, Section 421 of Cr.PC. is contains of provision of recovery of fine amount. However, from the perusal of application Exh.1, it is revealed that, the applicant in prayer clause B- specifically stated that, in execution of judgment of S.C.C.No.945/2020, non-applicants be sent to jail to suffer the imprisonment of 1 year. The applicant in prayer C and D- stated that, the fine amount of Rs.85,80,000/- be recovered from the non-applicants by attachment and sale of their property. Thus, from application below Exh.1 it is cleared that, applicant has claimed both reliefs i.e. execution of sentence of imprisonment and recovery of fine from non-applicants.

6. Accordingly, the applicant has filed an application Exh. 5 for execution of sentence of imprisonment against non-applicants. In that application Exh.5, applicant could not sought recovery of fine

amount against non-applicants. Therefore, while deciding application Exh.5, provisions of Section 421 of Cr.P.C. could not be considered. In order to execute the sentence against non-applicants the conviction warrant need to be issued. However, both non-applicants remained absent in the Court. Therefore, in absenty of non-applicants it is not possible to issue conviction warrant against non-applicants. In such situation this Court has no option except to issue N.B.W. as per Section 418 (2) of Cr.P.C. According, this Court vide order below Exh.5 has issued N.B.W. against non-applicants. The N.B.W. order below Exh.5 was passed only to execute the sentence of imprisonment against non-applicants. The grounds stated by non-applicants in present application i.e. provision of Section 421 of Cr.P.C. has no relevance. In present application the non-applicants have not mention any justified ground for cancellation or recalling of N.B.W. order passed against them. The non-applicants have filed the citation i.e. Arun Kumar Vs. State of Maharashtra, 2013 Supreme (BOM) 2600, decided on 24.12.2003. I read the judgment carefully. In that judgment the Hon'ble High Court ruled that, the N.B.W. order against accused can be cancelled in absence of accused. However, the fact and circumstances before me are different than the facts and circumstances of the judgment. The present accused/non-applicants are already convicted by this Court and N.B.W. order was passed against them to secure their presence for execution of the sentence of imprisonment against them. If non-applicants/ accused come before this Court either by execution of N.B.W. or appear sue-moto, in both situation they need to be send to jail along with conviction warrant. In such situation, it is not just and proper to cancel the N.B.W. Thus, for the reasons noted above I am of the view that, present citation is not applicable to the present situation.

7. For the reasons noted above the application of non-

applicants/ accused for cancellation or recalling N.B.W. order deserved to be rejected. Hence, the following order.

ORDER

The application (Exh.27) of non-applicants/ accused for cancellation or recalling N.B.W. order is rejected.

Phaltan.
Date-04.05.2026

(A.S.Satote)
Judicial Magistrate First Class, Phaltan.