



2025:HHC:40413

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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No. 697 of 2025

Decided on : 24.11.2025

Pradeep Singh @ Dippa & Anr.

...Petitioner

Versus

Seema & Anr.

...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Devender K. Sharma,
Advocate.

For the respondents : None for respondent No. 1.

Mr. H.S. Rawat, Mr. Mohinder
Zharaick, Additional A.Gs.,
with Ms. Ranjana Patial,
Deputy A.G., for respondent
No. 2-State.

Virender Singh, Judge (Oral)

Petitioners have filed the present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'the BNSS'), with a prayer to quash the orders dated 07.04.2025, 09.05.2025, 24.06.2025 and 28.08.2025, passed by learned Additional

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*



Chief Judicial Magistrate, Court No. 1 Una, District Una, H.P. (hereinafter referred to as 'the trial Court'), in case titled as Seema Vs Pardeep Singh @ Deepa, under the provisions of Domestic Violence Act. By way of the order(s) under challenge, the learned trial Court has ordered to secure the presence of petitioners, by way of Non Bailable Warrants.

2. Parties to the present petition, hereinafter shall be referred to, in the same manner, in which, they were referred to, by the learned trial Court.

3. Brief facts, leading to the filing of present petition, before this Court, may be summed up, as under:-

3.1 On the complaint of applicant Smt. Seema, the Protection Officer Haroli, submitted a Domestic Incident Report (hereinafter referred to as 'the DIR'), under Sections 9(b) and 37(2) of the Protection of Women From Domestic Violence Act, before the learned trial Court.

3.2 The learned trial Court has taken the cognizance on the said report and notices were ordered to be issued against both the parties.



3.3 During the pendency of the proceedings, interim relief was given to the applicant. Thereafter, the applicant was directed to adduce evidence, in support of her application. The points of determination were framed, by the learned trial Court, on 06.01.2024. Thereafter, number of opportunities, were given to the applicant to lead evidence in order to substantiate her stand.

3.5 On 31.01.2025, the learned trial Court has passed the following order:-

“No AW present. Time sought. Allowed. Let AWs be produced for cross-examination, on 07.03.2025. Last opportunity granted.”

3.6 The said order has been passed in the presence of learned Counsel for both the parties. On 07.03.2025, no one has put appearance on behalf of the respondent, as such, learned trial Court has issued NBWs against the respondent for 07.04.2025. Thereafter, the matter was adjourned for 09.05.2025, on that day, the concerned Alhmad, has made the report that steps not taken. Thereafter, the learned trial Court has again passed the order directing that the presence of respondent be secured through NBW for 24.06.2025.



3.7 The said orders have now been assailed by the petitioners before this Court on the ground that the procedure adopted by the learned trial Court i.e. issuance of NBW straight way is unknown to the law. In order to buttress his contention, learned Counsel for the petitioner has also submitted that the proceedings under Protection of Women from Domestic Violence Act, are civil in nature.

4. On the basis of above facts, a prayer has been made to set aside the orders, as assailed, in this Court.

5. When put to notice, the applicant has not bothered to put appearance.

6. Heard.

7. In this case, learned trial Court has adopted the procedure, which is totally unknown to the law, as, in the absence of the respondent, the proper course to learned trial Court is to issue notices, thereafter issue bailable warrants and thereafter, if the presence of the respondent could not be secured, then the harsh order qua issuance of non bailable warrants could have been passed. Whereas, in the present case, the learned trial Court has straight



away issued the non bailable warrants. The same is not sustainable in the eyes of law.

8. In the absence of any findings, with regard to the satisfaction of the learned trial Court, to issue non-bailable warrants, the impugned order is liable to be interfered with. While holding so, the view of this Court is being guided by the decision of the Hon'ble Apex Court in

Raghuvansh Dewanchand Bhasin versus State of Maharashtra & Another (2012) 9 Supreme Court Cases

791. Relevant paragraph 10 and 11 of the judgment are reproduced as under:-

“10. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued
12. In the absence of any findings, with regard to the satisfaction of the learned trial Court, to issue non-bailable warrants, the impugned order is liable to be interfered with. While holding so, the view of this Court is being guided by the decision of the Hon'ble Apex Court in **Raghuvansh Dewanchand Bhasin versus State of Maharashtra & Another (2012) 9 Supreme Court Cases 791.** Relevant paragraph 10 and 11 of the judgment are reproduced as under:-

“10. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued



mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The Courts have to be extra-cautious and careful while directing issue of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other. Indeed, it is a complex exercise. As Justice Cardozo puts it "on the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice."

11. Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter-alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of his absconding."

(self emphasis supplied)



9. The approach of the learned trial Court, by directly issuing the non-bailable warrants, is against the verdict of the Hon'ble Supreme Court in **Satinder Kumar Antil versus Central Bureau of Investigation and Another (2022) 10 Supreme Court Cases 51**, Relevant paragraph 35 of the judgment is reproduced as under:-

35. Considering the aforesaid two provisions, courts will have to adopt the procedure in issuing summons first, thereafter a bailable warrant, and then a non-bailable warrant may be issued, if so warranted, as held by this Court in Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1. Despite the aforesaid clear dictum, we notice that non-bailable warrants are issued as a matter of course without due application of mind and against the tenor of the provision, which merely facilitates a discretion, which is obviously to be exercised in favour of the person whose attendance is sought for, particularly in the light of liberty enshrined under Article 21 of the Constitution. Therefore, valid reasons have to be given for not exercising discretion in favour of the said person.

(self emphasis supplied)

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welfare of an individual must yield to that of the community. Therefore, in order to maintain rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other. Indeed, it is a complex exercise. As Justice Cardozo puts it "on the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice."

11. *Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter-alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of his absconding."*

(self emphasis supplied)

10. Consequently, the petition is allowed, and order dated 07.03.2025, and subsequent orders by virtue of which, NBWs were ordered to be issued, against the respondent, are ordered to be quashed.



11. The matter is remanded back to the learned trial Court, with a direction to secure the presence of both the parties, after issuing court notices to them. Thereafter, opportunity to cross-examine the AWs, to the respondents, be afforded, as per law.

12. Pending miscellaneous applications, if any, shall also stand disposed of accordingly.

(Virender Singh)
Judge

24th November, 2025
(Pramod)