

A RAGHUVANSH DEWANCHAND BHASIN

v.

STATE OF MAHARASHTRA & ANR.

(Criminal Appeal No.1758 of 2011)

B SEPTEMBER 9, 2011.

[D.K. JAIN AND H.L. DATTU, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

- C Chapter VI – Processes to compel appearance –
Warrant of arrest – In a complaint case for offence punishable
u/s 324 IPC on the date of hearing at preliminary stage,
appellant being absent the court issued a non-bailable
warrant against him – Held: Courts have to be extra-cautious
D 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
– The power has to be exercised judiciously and not arbitrarily,
having regard, inter-alia, to the nature and seriousness of the
E offence involved; the past conduct of the accused, his age
and the possibility of his absconding – In the instant case,
having regard to nature of the complaint against the appellant
and his stature in the community and the fact that he was
regularly attending the court proceedings, it was not a fit case
F where non-bailable warrant should have been issued – The
attendance of the appellant could have been secured by
issuing summons or at best by a bailable warrant –
Constitution of India, 1950 – Articles 21 and 22(1).

G ADMINISTRATION OF JUSTICE:

Criminal Justice – Execution of warrants to compel
appearance in court – non-bailable warrant issued against
appellant executed even after it had been cancelled –

Appellant, in spite of his telling that the warrant had been cancelled, was arrested before a public gathering during Independence Day celebrations, produced before the Duty Magistrate and was released the same day – Writ petition by appellant before High Court seeking disciplinary action against Inspector of Police concerned as also compensation damages and costs to be paid by him – High Court directing the Inspector to pay Rs. 2,000/- to the appellant – Held: The High Court has rightly held that the Inspector did not perform his duty in the manner expected of a responsible police officer – As a matter of fact, being the guardian of the liberty of a person, a heavy responsibility devolved on him to ensure that his office was not misused by the complainant to settle personal scores – The so-called urgency or promptness in execution led to undesirable interference with the liberty of the appellant – Such a conduct cannot receive a judicial imprimatur – However, the appellant does not deserve further monetary compensation – Being a practicing Advocate himself, the appellant was fully conversant with the court procedure and, therefore, should have procured a copy of memo/order whereby the non-bailable warrant was cancelled by the court – Though the conduct of the Inspector deserves to be deplored, yet, strictly speaking his action in detaining the appellant on the strength of the warrant in his possession, perhaps motivated, cannot be said to be per se without the authority of law – Therefore, no other action against him is warranted – He has been sufficiently reprimanded – Constitution of India, 1950 – Article 21 r/w Articles 226 and 32.

Compensation – HELD: The power and jurisdiction of Supreme Court and High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution to a victim whose fundamental rights under Article 21 of the Constitution are

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A *violated are well-established – High Court has awarded Rs.2,000/- to the appellant – Having considered the case in the light of the fact-situation, the appellant does not deserve further monetary compensation.*

B *Processes to compel appearance in court – Issuance of a warrant with endorsement “non-bailable” – Though no such terminology is found in the Code or Form-2, nevertheless, the endorsement of the expression “non-bailable” on a warrant is to facilitate the executing authority as well as the person against whom the warrant is sought to be executed to make them aware as to the nature of the warrant that has been issued – Merely because the warrant uses the expression “non-bailable”, that by itself cannot render the warrant bad in law – In order to check or obviate the possibility of misuse of an arrest warrant, in addition to the statutory and constitutional requirements, **guidelines** laid down to be adopted in all cases where non-bailable warrants are issued by the courts – Code of Criminal Procedure, 1973 – ss. 70, 71 and 476 r/w Second Schedule, Form-2.*

E **In a case arising out of a criminal complaint against the appellant, a practicing Advocate, for an offence punishable u/s 324 IPC, at the preliminary stage of hearing, the trial court, on 7.8.2002, finding him to be absent, issued a non-bailable warrant against him returnable on 31.10.2002. The warrant was forwarded to the Police Station concerned. On 12.8.2002, the appellant put in appearance before the court and the warrant was cancelled. On 15.8.2002, at the instance of the complainant, respondent no.2, an Inspector of Police, directed a constable to accompany the complainant and execute the said non-bailable warrant. The appellant, in spite of his telling that the warrant had been cancelled, was arrested before a public gathering during the independence day celebrations. He was produced before**

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the Duty Magistrate and was released the same day. He then filed a writ petition before the High Court alleging mala fides and humiliation at the hands of respondent no. 2 in collusion with the complainant and prayed for suitable disciplinary action against respondent no. 2, and for compensation, damages and costs to be paid by him. The High Court allowed the writ petition and directed respondent no. 2 to pay an amount of Rs. 2000/- as costs to the appellant from his own account. The appellant, having failed to get the desired relief, filed the appeal.

Dismissing the appeal, the Court

HELD: 1.1 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 issuance of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. 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. [para 9] [312-D-F]

1.2 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

A the possibility of his absconding. [para 9] [313-A-B]

State of U.P. Vs. Poosu & Anr. 1976 (3) SCR 1005 = 1976 (3) SCC 1 - relied on.

B 1.3 In Inder Mohan Goswami's case*, this Court, keeping in view the right to life and personal liberty, enshrined in Articles 21 and 22(1) of the Constitution, enumerated some of the circumstances which the Court should bear in mind while issuing non-bailable warrant. [para 10-11] [313-C; 314-E-F]

C *Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.* 2007 (10) SCR 847 = 2007 (12) SCC 1 - relied on.

D 1.4 In the instant case, having regard to nature of the complaint against the appellant and his stature in the community and the fact that admittedly he was regularly attending the court proceedings, it was not a fit case where non-bailable warrant should have been issued by the Additional Chief Metropolitan Magistrate. The attendance of the appellant could have been secured by issuing summons or at best by a bailable warrant. Therefore, the High Court rightly held that in the facts and circumstances of the case, issuance of non-bailable warrant was manifestly unjustified. [para 12] [314-G-H; 315-A-B]

E 2.1 As regards the conduct of respondent No.2, at whose direction the warrant was executed, he was aware that the non-bailable warrant issued on account of failure on the part of the appellant to attend the court proceedings on 7.8.2002, was returnable only on 31.10.2002. Undoubtedly, respondent No.2 was duty bound to execute the warrant as expeditiously as possible, but there is no justifiable reason for the urgency in executing the warrant on a National holiday, more so

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when it had been issued more than a week ago. It is
apparent from the record that the warrant was executed
at the behest of the complainant in order to denigrate and
humiliate the appellant at a public place, in public view,
during the course of Independence Day celebrations. This
Court is convinced that respondent No.2, in collusion
with the complainant, played with the personal liberty of
the appellant in a high handed manner. The High Court
has rightly held that respondent No.2 did not perform his
duty in the manner expected of a responsible police
officer. As a matter of fact, being the guardian of the liberty
of a person, a heavy responsibility devolved on him to
ensure that his office was not misused by the
complainant to settle personal scores. The so-called
urgency or promptness in execution led to undesirable
interference with the liberty of the appellant. Such a
conduct cannot receive a judicial imprimatur. [para 13]
[315-C-H; 316-A-C]

2.2 It is trite principle of law that in matters involving
infringement or deprivation of a fundamental right, abuse
of process of law, harassment etc., the courts have ample
power to award adequate compensation to an aggrieved
person not only to remedy the wrong done to him but
also to serve as a deterrent for the wrong doer. The
power and jurisdiction of this Court and the High Courts
to grant monetary compensation in exercise of its
jurisdiction respectively under Articles 32 and 226 of the
Constitution of India to a victim whose fundamental rights
under Article 21 of the Constitution are violated are thus,
well-established. [para 15 and 19] [316-F; 319-G]

Rudul Sah Vs. State of Bihar & Anr. 1983 (3) SCR 508
= 1983 (4) SCC 141, *Bhim Singh, MLA Vs. State of J & K*
& Ors. 1985 (4) SCC 677; and *Nilabati Behera (Smt) Alias*
Lalita Behera Vs. State of Orissa & Ors 1993 (2) SCR
581 = 1993 (2) SCC 746 - relied on.

A 2.3 Having considered the case in the light of the fact-
situation, this Court is of the opinion that the appellant
does not deserve further monetary compensation. It is
true that the appellant not only suffered humiliation in the
public gathering, and remained in judicial custody for
B some time but, being a practicing Advocate himself, he
was fully conversant with the court procedure and,
therefore, should have procured a copy of memo/order
dated 12.8.2002, whereby the non-bailable warrant was
cancelled by the court. Admittedly, the appellant applied
C and obtained a copy of such order only on 16.8.2002.
Though the conduct of respondent No.2 in arresting the
appellant, ignoring his plea that the non-bailable warrant
issued by the court in a bailable offence had been
cancelled, deserves to be deplored, yet, strictly speaking
D the action of respondent No.2 in detaining the appellant
on the strength of the warrant in his possession, perhaps
motivated, cannot be said to be per se without the
authority of law. In that view of the matter, no other action
against respondent No.2 is warranted. He has been
E sufficiently reprimanded. [para 19-20] [319-G-H; 320-A-E]

3. As regards the issue whether the Courts can at all
issue a warrant, called a "non-bailable" warrant, it is true
that neither s. 70 nor s. 71, appearing in Chapter VI of the
Code of Criminal Procedure, 1973, enumerating the
F processes to compel appearance, nor Form 2 of the
Second Schedule to the Code, uses the expression like
"non-bailable". Section 70 merely speaks of form of
warrant of arrest, and ordains that it will remain in force
until it is cancelled. Similarly s. 71 talks of discretionary
G power of court to specify about the security to be taken
in case the person is to be released on his arrest
pursuant to the execution of the warrant issued u/s 70 of
the Code. Sub-s. (2) of s. 71 of the Code specifies the
endorsements which can be made on a warrant.
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Nevertheless, the endorsement of the expression “non-bailable” on a warrant is to facilitate the executing authority as well as the person against whom the warrant is sought to be executed to make them aware as to the nature of the warrant that has been issued. Merely because Form No.2, issued u/s 476 of the Code, and set forth in the Second Schedule, nowhere uses the expression bailable or non-bailable warrant, that does not prohibit the courts from using the said word or expression while issuing the warrant or even to make endorsement to that effect on the warrant so issued. Any endorsement/variation, which is made on such warrant for the benefit of the person against whom the warrant is issued or the persons who are required to execute the warrant, would not render the warrant to be bad in law. What is material is that there is a power vested in the court to issue a warrant and that power is to be exercised judiciously depending upon the facts and circumstances of each case. Being so, merely because the warrant uses the expression like “non-bailable” and that such terminology is not to be found in either s. 70 or s. 71 of the Code that by itself cannot render the warrant bad in law. Therefore, no ground is made out warranting interference with the impugned judgment of the High Court. [para 21-22] [320-F-H; 321-A-F]

4. In order to prevent such a paradoxical situation, as has arisen in the instant case, and to check or obviate the possibility of misuse of an arrest warrant, in addition to the statutory and constitutional requirements, guidelines are laid down in the instant judgment, to be adopted in all cases where non-bailable warrants are issued by the courts. This Court expects and hopes that all the High Courts will issue appropriate directions in this behalf to the Subordinate Courts, which shall endeavour to put into practice the directions issued in the instant judgment. [para 23-24] [321-G-H; 322-A; 325-A-B]

A Case Law Reference:

1976 (3) SCR 1005 relied on para 9

2007 (10) SCR 847 relied on para 10

B 1983 (3) SCR 508 relied on para 16

1985 (4) SCC 677 relied on para 17

1993 (2) SCR 581 relied on para 18

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1758 of 2011.From the Judgment & Order dated 26.11.2007 of the High
Court of Bombay in Cr. W.P. No. 1086 of 2002.D Shankar Chillarge, AAG, R.D. Bhasin (In-Person) Jay
Savla, Dharmendra, Ashok Shahani, Renuka Sahu, Shilpi
Choudhry, Asha G. Nair for the appearing parties.

The Judgment of the Court was delivered by

E D.K. JAIN, J.: 1. Leave granted.

2. This appeal, by special leave, is directed against the
judgment and order dated 26th November 2007, rendered by
the High Court of Judicature at Bombay, in CRL. W.P. No.1086/
F 2002. By the impugned judgment, while allowing the writ petition
filed by the appellant, alleging harassment on account of his
arrest on the strength of a non-bailable warrant, which had been
cancelled, the High Court has directed the delinquent police
officer to pay by way of costs to the appellant an amount of Rs.
G 2,000/- from his own account.

3. Shorn of unnecessary details, the facts material for
adjudication of the present case, may be stated thus:

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RAGHUVANSH DEWANCHAND BHASIN v. STATE 309
OF MAHARASHTRA & ANR. [D.K. JAIN, J.]

Some time in the year 2000, one, Mr. Prem Harchandrai filed a complaint, being C.C. No. 163/P/2000, against the appellant, a practicing Advocate, under Section 324 of the Indian Penal Code, 1860 (for short "the IPC"), in relation to some incident alleged to have taken place in the 'Radio Club' at Mumbai, considered to be a club for the elite. When at a preliminary stage, the case came up for hearing before the Additional Chief Metropolitan Magistrate on 7th August, 2002, finding the appellant to be absent, the Court issued a non-bailable warrant against him returnable on 31st October, 2002. The warrant was forwarded to the Colaba Police Station for execution. However, on 12th August, 2002, on appellant's putting in an appearance before the Court, the warrant was cancelled.

4. On 15th August, 2002, the complainant approached the Colaba Police Station and insisted on the arrest of the appellant in pursuance of the said non-bailable warrant. Thereupon, respondent No. 2, who at that point of time was posted as an Inspector of Police at the Colaba Police Station, directed a constable to accompany the complainant, and execute the warrant. When the appellant was sought to be arrested, he informed the constable that the said warrant had already been cancelled. However, as he could not produce any documentary evidence relating to cancellation of warrant, the appellant was arrested before a public gathering which had assembled at the Radio Club, in connection with the Independence day celebrations. He was produced before the duty Magistrate at about 2 P.M., the same day. The Magistrate directed the release of the appellant. It appears that the appellant obtained the necessary confirmation about cancellation of the warrant on the next day i.e. 16th August 2002 and produced the same before respondent No. 2 on the same day. Alleging malafides and humiliation at the hands of respondent No. 2, in collusion with the complainant, the appellant approached the High Court, inter-alia, praying for suitable disciplinary action against

A respondent No.2; adequate compensation; damages and costs by the said respondent from his own pocket.

5. As aforesaid, the High Court, vide impugned judgment has allowed the writ petition, *inter alia*, observing thus :

B "We therefore, find that there was no justification for
issuance of non-bailable warrant on 7th August, 2002
merely because the petitioner had remained absent in
Criminal Case No. 163/P/2000 (*sic*) by the Metropolitan
Magistrate. The Magistrate could have issued either a
C notice or a bailable warrant depending upon the facts
revealed from the records. Once the warrant was cancelled
on 12th August, 2002, it was necessary for the Court to
immediately communicate the same to the concerned
D Police authority so that no inconvenience could have been
caused to the person against whom the warrant was initially
issued. Once the warrant was sought to be executed on
holiday and the concerned police officer was categorically
E informed that the warrant had already been cancelled and
the police officer being fully aware of the circumstances
and nature of the case in which warrant had been issued,
it was necessary for the police officer to ascertain and to
find out whether the warrant which was sought to be
executed was still enforceable or had already been
F cancelled and not to rush to execute the warrant in those
circumstances and that too on a holiday. Having produced
the necessary documents confirming the cancellation of the
warrant much prior to the date on which it was sought to
be (*sic*) enforced, it was the duty of the police officer to
G tender the necessary apology to the petitioner for executing
such warrant on the holiday, and the concerned officer
having failed to tender the apology it apparently shows that
he had not performed his duty in the manner he was
required to perform as a responsible police officer. Even
H the affidavit filed by the respondent No. 2 nowhere

discloses any repentance for having executed the warrant which was already cancelled. It is a clear case of unnecessary interference with the liberty of a citizen.”

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6. Thus, having failed to get the desired relief from the High Court, the appellant is before us in this appeal.

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7. Arguing the case in person, it was strenuously urged by the appellant that having regard to the nature of offence alleged against him, in the first place, the Additional Chief Metropolitan Magistrate erred in law in issuing non-bailable warrant in a routine manner, without application of mind, merely because the appellant had failed to appear in court on 7th August 2002. It was asserted that since neither Section 70 nor Section 71 of the Code of Criminal Procedure, 1973 (for short “the Code”) uses the expression “non-bailable” a Magistrate is not authorised to issue non-bailable warrant of arrest even when an accused fails to appear in the court. It was submitted that having held that the respondent No.2 was guilty of misconduct, the High Court failed to punish the said respondent under Sections 342 and 345 of the IPC. It was argued that the misconduct of respondent No.2 was so high that he should have been forthwith suspended from his job and ordered to be tried in a competent criminal court. According to the appellant, the direction of the High Court asking respondent No.2 to pay an amount of Rs. 2,000/- by way of cost to the appellant was no justice at all and if a strict action is not taken against such delinquent officers, they will continue to disregard the orders of the courts with impunity.

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8. *Per contra*, Mr. Jay Savla, learned counsel appearing for respondent No.2 submitted that since the appellant was unable to furnish any document or order to establish that non-bailable warrant issued against him by the court had been cancelled, the police authorities were left with no option and in fact were duty bound to execute the same. It was also urged

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A that, as per the prevalent practice, whenever any non-bailable
warrant is cancelled by the court, either memo or order
addressed to the Senior Inspector of Police of the concerned
police station is issued and forwarded directly to the concerned
police station with a direction to return the said warrant to the
B court. But in the present case no such memo or order in writing
had been received at the police station on or before 15th
August 2002, when it was executed. Learned counsel
submitted that the said respondent having performed his duty
bona fide and in good faith, in pursuance of order issued by
C the court having jurisdiction, the said respondent had not
committed any illegal act warranting any action against him.

9. It needs little emphasis that since the execution of a
non-bailable warrant directly involves curtailment of liberty of a
D 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
E 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
F 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
G office. There are dangers in any choice." 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
H 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. (Also See: *State of U.P. Vs. Poosu & Anr.*¹).

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10. In *Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.*², a Bench of three learned Judges of this Court cautioned that before issuing non-bailable warrants, the Courts should strike a balance between societal interests and personal liberty and exercise its discretion cautiously. Enumerating some of the circumstances which the Court should bear in mind while issuing non-bailable warrant, it was observed:

“53. 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. This could be when:

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- 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.

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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-

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1. (1976) 3 SCC 1.

2. (2007) 12 SCC 1.

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A 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
E 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
C bailable warrant. In the third instance, when the court is fully
satisfied that the accused is avoiding the court's
proceeding intentionally, the process of issuance of the
non-bailable warrant should be resorted to. Personal
D liberty is paramount, therefore, we caution courts at the first
and second instance to refrain from issuing non-bailable
warrants."

11. We deferentially concur with these directions, and
emphasize that since these directions flow from the right to life
E and personal liberty, enshrined in Articles 21 and 22(1) of our
Constitution, they need to be strictly complied with. However,
we may hasten to add that these are only broad guidelines and
not rigid rules of universal application when facts and behavioral
patterns are bound to differ from case to case. Since discretion
F in this behalf is entrusted with the court, it is not advisable to
lay down immutable formulae on the basis whereof discretion
could be exercised. As aforesaid, it is for the court concerned
to assess the situation and exercise discretion judiciously,
dispassionately and without prejudice.

G 12. Viewed in this perspective, we regret to note that in
the present case, having regard to nature of the complaint
against the appellant and his stature in the community and the
fact that admittedly the appellant was regularly attending the
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court proceedings, it was not a fit case where non-bailable warrant should have been issued by the Additional Chief Metropolitan Magistrate. In our opinion, the attendance of the appellent could have been secured by issuing summons or at best by a bailable warrant. We are, therefore, in complete agreement with the High Court that in the facts and circumstances of the case, issuance of non-bailable warrant was manifestly unjustified.

13. We shall now advert to a more anxious point, viz. the conduct of respondent No.2, at whose direction the warrant was executed. It needs no emphasis that any form of degrading treatment would fall within the inhibition of Article 21 of the Constitution. In the present case, respondent No.2 was aware that the non-bailable warrant issued on account of failure on the part of the appellent to attend the court proceedings on 7th August 2002, was returnable only on 31st October 2002. Undoubtedly, respondent No.2 was duty bound to execute the warrant as expeditiously as possible but we are unable to fathom any justifiable reason for the urgency in executing the warrant on a National holiday, more so when it had been issued more than a week ago and even the complaint against the appellent was in relation to the offence punishable under Section 324 of the IPC. The complaint related to the year 2000. At the relevant time, the offence punishable under Section 324 of the IPC was a bailable offence. It is apparent from the record that the warrant was executed at the behest of the complainant in order to denigrate and humiliate the appellent at a public place, in public view, during the course of Independence day celebrations at Radio Club. We are convinced that respondent No.2, in collusion with the complainant, played with the personal liberty of the appellent in a high handed manner. The unfortunate sequel of an unmindful action on the part of respondent No.2 was that the appellent, a practicing Advocate, with no criminal history, remained in police custody for quite some time without any justification whatsoever and suffered unwarranted

- A humiliation and degradation in front of his fellow members of the Club. Regrettably, he lost his freedom though for a short while, on the Independence day. Here also, we agree with the High Court that respondent No.2 did not perform his duty in the manner expected of a responsible police officer. As a matter
- B of fact, being the guardian of the liberty of a person, a heavy responsibility devolved on him to ensure that his office was not misused by the complainant to settle personal scores. The so-called urgency or promptness in execution led to undesirable interference with the liberty of the appellant. Such a conduct
- C cannot receive a judicial imprimatur.

14. That takes us to the core issue, namely, whether the appellant is entitled to any compensation for the humiliation and harassment suffered by him on account of the wrong
- D perpetrated by respondent No.2, in addition to what has been awarded by the High Court. As aforesaid, the grievance of the appellant is that imposition of a fine of Rs. 2,000/- on respondent No.2 is grossly inadequate. His prayer is that in addition to an adequate amount of compensation, respondent
- E No.2 should also be prosecuted and proceeded against departmentally for his wrongful confinement.

15. It is trite principle of law that in matters involving infringement or deprivation of a fundamental right; abuse of process of law, harassment etc., the courts have ample power
- F to award adequate compensation to an aggrieved person not only to remedy the wrong done to him but also to serve as a deterrent for the wrong doer.

16. In *Rudul Sah Vs. State of Bihar & Anr.*³, Y.V. Chandrachud, CJ, speaking for a Bench of three learned
- G Judges of this Court had observed thus:

“One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the

H 3. (1983) 4 SCC 141.

mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt.”

17. In *Bhim Singh, MLA Vs. State of J & K & Ors.*⁴, holding illegal detention in police custody of the petitioner Bhim Singh to be violative of his rights under Articles 21 and 22(2) of the Constitution, this Court, in exercise of its power to award compensation under Article 32, directed the State to pay monetary compensation to the petitioner. Relying on *Rudal Sah* (supra), O. Chinnappa Reddy, J. echoed the following views:

“When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation”.

18. In *Nilabati Behera (Smt) Alias Lalita Behera Vs. State of Orissa & Ors.*⁵, clearing the doubt and indicating the precise nature of the constitutional remedy under Articles 32 and 226 of the Constitution to award compensation for contravention of fundamental rights, which had arisen because of the observation that “the petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial” in *Rudul Sah* (supra), J.S. Verma, J. (as His Lordship then was) stated as under:

“It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms,

4. (1985) 4 SCC 677.

5. (1993) 2 SCC 746

A the protection of which is guaranteed in the Constitution,
 is an acknowledged remedy for enforcement and
 protection of such rights, and such a claim based on strict
 liability made by resorting to a constitutional remedy
 provided for the enforcement of a fundamental right is
 B 'distinct from, and in addition to, the remedy in private law
 for damages for the tort' resulting from the contravention
 of the fundamental right. The defence of sovereign immunity
 being inapplicable, and alien to the concept of guarantee
 of fundamental rights, there can be no question of such a
 C defence being available in the constitutional remedy. It is
 this principle which justifies award of monetary
 compensation for contravention of fundamental rights
 guaranteed by the Constitution, when that is the only
 practicable mode of redress available for the contravention
 D made by the State or its servants in the purported exercise
 of their powers, and enforcement of the fundamental right
 is claimed by resort to the remedy in public law under the
 Constitution by recourse to Articles 32 and 226 of the
 Constitution. This is what was indicated in Rudul Sah and
 E is the basis of the subsequent decisions in which
 compensation was awarded under Articles 32 and 226 of
 the Constitution, for contravention of fundamental rights."

F In the same decision, in his concurring judgment, Dr. A.S.
 Anand, J. (as His Lordship then was), explaining the scope and
 purpose of public law proceedings and private law proceedings
 stated as under:

G "The public law proceedings serve a different purpose than
 the private law proceedings. The relief of monetary
 compensation, as exemplary damages, in proceedings
 under Article 32 by this Court or under Article 226 by the
 High Courts, for established infringement of the
 indefeasible right guaranteed under Article 21 of the
 H Constitution is a remedy available in public law and is

based on the strict liability for contravention of the guaranteed basic and infeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

19. The power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are thus, well-established. However, the question now is whether on facts in hand, the appellant is entitled to monetary compensation in addition to what has already been awarded to him by the High Court. Having considered the case in the light of the fact-

A situation stated above, we are of the opinion that the appellant does not deserve further monetary compensation.

20. It is true that the appellant not only suffered humiliation in the public gathering, and remained in judicial custody for some time but we feel that for what he had undergone on 15th August 2002, some blame lies at his door as well. Being a practicing Advocate himself, the appellant was fully conversant with the court procedure and, therefore, should have procured a copy of memo/order dated 12th August 2002, whereby the non-bailable warrant was cancelled by the court. As noticed above, admittedly, the appellant applied and obtained a copy of such order only on 16th August 2002. Though the conduct of respondent No.2 in arresting the appellant, ignoring his plea that the non-bailable warrant issued by the court in a bailable offence had been cancelled, deserves to be deplored, yet, strictly speaking the action of respondent No.2 in detaining the appellant on the strength of the warrant in his possession, perhaps motivated, cannot be said to be per se without the authority of law. In that view of the matter, in our opinion, no other action against respondent No.2 is warranted. He has been sufficiently reprimanded.

21. The last issue raised that remains to be considered is whether the Courts can at all issue a warrant, called a "non-bailable" warrant because no such terminology is found in the Code as well as in Form 2 of the Second Schedule to the Code. It is true that neither Section 70 nor Section 71, appearing in Chapter VI of the Code, enumerating the processes to compel appearance, as also Form 2 uses the expression like "non-bailable". Section 70 merely speaks of form of warrant of arrest, and ordains that it will remain in force until it is cancelled. Similarly Section 71 talks of discretionary power of Court to specify about the security to be taken in case the person is to be released on his arrest pursuant to the execution of the warrant issued under Section 70 of the Code.

Sub-section (2) of Section 71 of the Code specifies the A
endorsements which can be made on a warrant. Nevertheless,
we feel that the endorsement of the expression "non-bailable"
on a warrant is to facilitate the executing authority as well as
the person against whom the warrant is sought to be executed B
to make them aware as to the nature of the warrant that has
been issued. In our view, merely because Form No.2, issued
under Section 476 of the Code, and set forth in the Second
schedule, nowhere uses the expression bailable or non-
bailable warrant, that does not prohibit the Courts from using C
the said word or expression while issuing the warrant or even
to make endorsement to that effect on the warrant so issued.
Any endorsement/variation, which is made on such warrant for
the benefit of the person against whom the warrant is issued
or the persons who are required to execute the warrant, would D
not render the warrant to be bad in law. What is material is that
there is a power vested in the Court to issue a warrant and that
power is to be exercised judiciously depending upon the facts
and circumstances of each case. Being so, merely because
the warrant uses the expression like "non-bailable" and that such E
terminology is not to be found in either Section 70 or Section
71 of the Code that by itself cannot render the warrant bad in
law. The argument is devoid of substance and is rejected
accordingly.

22. In view of the foregoing discussion, no ground is made F
out warranting our interference with the impugned judgment of
the High Court. We confirm the judgment and dismiss the
appeal accordingly, but with no order as to costs.

23. However, before parting with the judgment, we feel that G
in order to prevent such a paradoxical situation, we are faced
with in the instant case, and to check or obviate the possibility
of misuse of an arrest warrant, in addition to the statutory and
constitutional requirements to which reference has been made
above, it would be appropriate to issue the following guidelines H

- A to be adopted in all cases where non-bailable warrants are issued by the Courts:-
- (a) All the High Court shall ensure that the Subordinate Courts use printed and machine numbered Form No.2 for issuing warrant of arrest and each such form is duly accounted for;
 - (b) Before authenticating, the court must ensure that complete particulars of the case are mentioned on the warrant;
 - (c) The presiding Judge of the court (or responsible officer specially authorized for the purpose in case of High Courts) issuing the warrant should put his full and legible signatures on the process, also ensuring that Court seal bearing complete particulars of the Court is prominently endorsed thereon;
 - (d) The Court must ensure that warrant is directed to a particular police officer (or authority) and, unless intended to be open-ended, it must be returnable whether executed or unexecuted, on or before the date specified therein;
 - (e) Every Court must maintain a register (in the format given below), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;
 - (f) No warrant of arrest shall be issued without being entered in the register mentioned above and the concerned court shall periodically check/monitor the same to confirm that every such process is always returned to the court with due report and placed on the record of the concerned case;

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- (g) A register similar to the one in clause (e) supra shall be maintained at the concerned police station. The Station House Officer of the concerned Police Station shall ensure that each warrant of arrest issued by the Court, when received is duly entered in the said register and is formally entrusted to a responsible officer for execution; A B
- (h) Ordinarily, the Courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long; C
- (i) On the date fixed for the return of the warrant, the Court must insist upon a compliance report on the action taken thereon by the Station House Officer of the concerned Police Station or the Officer In-charge of the concerned agency; D
- (j) The report on such warrants must be clear, cogent and legible and duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in case of misuse; E
- (k) In the event of warrant for execution beyond jurisdiction of the Court issuing it, procedure laid down in Sections 78 and 79 of the Code must be strictly and scrupulously followed; and F
- (l) In the event of cancellation of the arrest warrant by the Court, the order cancelling warrant shall be recorded in the case file and the register maintained. A copy thereof shall be sent to the concerned authority, requiring the process to be returned unexecuted forthwith. The date of receipt of the unexecuted warrant will be entered in the aforesaid registers. A copy of such order shall also be supplied to the accused. G H

Format of the Register

A

24. We expect and hope that all the High Courts will issue appropriate directions in this behalf to the Subordinate Courts, which shall endeavour to put into practice the aforesaid directions at the earliest, preferably within six months from today.

B

R.P.

Appeal dismissed.