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24.4. In the event the third and the fourth accused also desire inspection of the unmarked and unexhibited documents such inspection will be allowed by the learned trial court. In such an event the process of inspection will also be simultaneously carried out and completed within the period of 21 days stipulated in the present order.

25. In the result, both the appeals shall stand disposed of in terms of the directions as above.

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(BEFORE D.K. JAIN AND H.L. DATTU, JJ.)

RAGHUVANSH DEWANSHAND BHASIN . . . Appellant;

Versus

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STATE OF MAHARASHTRA
AND ANOTHER . . . Respondents.

Criminal Appeal No. 1758 of 2011[†], decided on September 9, 2011

A. Criminal Procedure Code, 1973 — Ss. 204, 70, 71, 74 and 76 — Non-bailable warrant (NBW) — Issuance of — Duty and discretion of court regarding, explained — Striking a balance between an individual's rights, liberties and privileges on one hand, and State as representative of the community/polity, on the other — Necessity of — In instant case, having regard to nature of complaint against appellant (a practising advocate) and his stature in community and fact that admittedly appellant was regularly attending court proceedings, held, it was not a fit case where NBW should have been issued — Attendance of appellant could have been secured by issuing summons or at best by a bailable warrant — In facts and circumstances of case, issuance of NBW was manifestly unjustified — Constitution of India — Arts. 21 and 22(1) — Penal Code, 1860, S. 324

A complaint against the appellant herein, a practising advocate, was filed under S. 324 IPC. When the case came up for hearing on 7-8-2002, absence of the appellant led to the court issuing non-bailable warrant (NBW) against him, returnable on 31-10-2002. However, on 12-8-2002, on the appellant putting in appearance before the court, the warrant was cancelled. However, on 15-8-2002, on the complainant's insistence for arrest of the appellant in pursuance of said NBW, Respondent 2 (Police Inspector) 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 the appellant could not produce any documentary evidence relating to cancellation of the warrant, he was arrested before a public gathering, which had assembled in connection with the Independence Day celebrations at his club. He was produced before the duty Magistrate the same day, who directed his release. Thereafter, the appellant obtained necessary confirmation about cancellation of the warrant on 16-8-2002 and produced the same before Respondent 2 on the same day.

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[†] Arising out of SLP (Crl.) No. 5412 of 2008. From the Judgment and Order dated 26-11-2007 of the High Court of Bombay in Crl. WP No. 1086 of 2002

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Alleging mala fides and humiliation at the hands of Respondent 2 in collusion with the complainant, the appellant approached the High Court, inter alia, praying for suitable disciplinary action against Respondent 2; adequate compensation; and damages and costs by the said respondent from his own pocket. The High Court vide the impugned judgment, directed the delinquent police officer to pay by way of costs to the appellant, an amount of Rs 2000 from his own account. Having failed to get the desired relief from the High Court, the appellant filed the instant appeal. a

Dismissing the appeal, the Supreme Court b

Held :

Since the execution of a non-bailable warrant (NBW) directly involves curtailment of liberty of a person, a 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 an NBW, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution. Since discretion 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. It is for the court concerned to assess the situation and exercise discretion judiciously, dispassionately and without prejudice. 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 the 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. c
(Paras 10, 12 and 13) d

Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259; *People v. Defore*, 242 NY 13, at 24 : 150 NE 585, at 589 (1926), *relied on*

**B. Criminal Procedure Code, 1973 — Ss. 204, 190(1)(a), 70, 71, 74 and 76 — Failure of accused to attend court on date of hearing — Issuance of appropriate warrant against accused therefor: whether bailable warrant, or, non-bailable warrant (NBW) to be issued — Undisputed power and jurisdiction of court regarding — Ingredients necessary for exercising such power — Held, it is for court which is clothed with discretion to determine whether presence of accused can be secured by bailable or non-bailable warrant, to strike balance between need of law enforcement on one hand and protection of citizen from highhandedness at the hands of law-enforcement agencies on the other — Power and jurisdiction of court to issue appropriate warrant against accused on his failure to attend court on the date of hearing of matter cannot be disputed — Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter alia, to nature and seriousness of offence involved, past conduct of accused, his age and possibility of his absconding — Constitution of India, Arts. 21, 22(1) and 14 e
(Para 11) f**

State of U.P. v. Poosu, (1976) 3 SCC 1 : 1976 SCC (Cri) 368, *relied on*

**C. Constitution of India — Arts. 21, 22, 32 and 226 — Compensation — Matters involving infringement or deprivation of fundamental rights, abuse of process of law, harassment, etc. — Held, in such matters, Courts have g
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a ample power to award adequate compensation to an aggrieved person, not only to remedy wrong done to him, but also to serve as a deterrent for wrongdoers — Power and jurisdiction of Supreme Court and High Courts to grant monetary compensation in exercise of their jurisdiction respectively under Arts. 32 and 226 of Constitution, to a victim whose fundamental rights under Art. 21 are violated, are well established (Paras 17 to 22)

Rudul Sah v. State of Bihar, (1983) 4 SCC 141 : 1983 SCC (Cri) 798; *Bhim Singh v. State of J&K*, (1985) 4 SCC 677 : 1986 SCC (Cri) 47; *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 : 1993 SCC (Cri) 527, followed

b D. Criminal Procedure Code, 1973 — Ss. 204, 190(1)(a), 70, 71, 74 and 76 — Non-bailable warrant (NBW) issued on account of failure of appellant-accused to attend court proceedings — Warrant made returnable on 85th day from its issue — Accused arrested on basis of such warrant, which was executed on 8th day, in spite of it being a National holiday (Independence Day) — No justifiable reason present for such urgency in executing warrant on a National holiday — Such conduct of police officer, on whose direction warrant was executed, not justified — Constitution of India — Art. 21 — Penal Code, 1860, S. 324 (Paras 14 and 15)

c E. Criminal Procedure Code, 1973 — Ss. 204, 190(1)(a), 70, 71, 74 and 76 — Arrest on basis of cancelled non-bailable warrant (NBW) — High Court directing delinquent police officer (Respondent 2) responsible for executing such warrant, to pay monetary compensation of Rs 2000 to aggrieved person (appellant), from his own account — Such punishment, if adequate — Whether aggrieved person entitled to any compensation for humiliation and harassment suffered by him on account of wrong perpetrated by delinquent police officer, in addition to what was awarded by High Court and in addition to adequate amount of compensation, police officer should also be prosecuted and proceeded against departmentally for his wrongful confinement — Held, appellant being a practising advocate himself, some blame lies on him as well for such arrest, as he was fully conversant with court procedure and, therefore, should have procured a copy of memo/order whereby NBW was cancelled by court — Admittedly, he applied for and obtained a copy of such order afterwards — Though conduct of Respondent 2 in arresting appellant, ignoring appellant's plea that NBW issued by court had been cancelled, deserves to be deplored, yet strictly speaking, action of Respondent 2 in detaining appellant on strength of warrant in his possession, perhaps motivated, cannot be said to be per se without authority of law — Hence, no other action against Respondent 2 warranted — He has been sufficiently reprimanded — Penal Code, 1860, S. 324 — Tort Law — Malicious prosecution/Wrongful prosecution — Constitution of India, Arts. 21, 22(1) and 14 (Paras 22, 23 and 27)

Raghuvansh Dewanchand Bhasin v. State of Maharashtra, WP (Cri) No. 1086 of 2002, order dated 26-11-2007 (Bom), affirmed

d F. Criminal Procedure Code, 1973 — Ss. 204, 70, 71, 476 and Sch. II Form 2 — “Non-bailable” warrant (NBW) — No such terminology found in CrPC as well as in Sch. II Form 2 — Issuance of such warrant by courts — Validity of — Held, it is true that neither S. 70 nor S. 71 appearing in Ch. VI

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CrPC, enumerating processes to compel appearance, as also Sch. II Form 2, uses expression like “non-bailable” — However, S. 71(2) specifies endorsements which can be made on a warrant — Endorsement of expression “non-bailable” on a warrant is to facilitate executing authority as well as person against whom warrant is sought to be executed, to make them aware as to nature of warrant that has been issued — Merely because Form 2 issued under S. 476 and set forth in Sch. II nowhere uses expression “bailable” or “non-bailable” warrant, that does not prohibit courts from using said word or expression while issuing warrant or even to make endorsement to that effect on warrant so issued (Paras 7 and 24 to 26)

G. Criminal Procedure Code, 1973 — Ss. 204, 70, 71 and Sch. II Form 2 — Cases where non-bailable warrants (NBWs) are issued by courts — Necessary guidelines to be adopted in, issued by Supreme Court — All High Courts directed to issue appropriate directions in this behalf to subordinate courts, which shall endeavour to put directions into practise at the earliest, preferably within six months — Constitution of India, Arts. 136, 32, 141 and 144 (Paras 28 and 29)

Y-D/48605/CR

Advocates who appeared in this case :

Shankar Chillarge, Additional Advocate General [R.D. Bhasin (In-Person), Jay Savla, Dharmendra, Ashok Shahani, Ms Renuka Sahu, Ms Shilpi Choudhry and Ms Asha G. Nair, Advocates] for the appearing parties.

Chronological list of cases cited

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| 1. (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259, <i>Inder Mohan Goswami v. State of Uttaranchal</i> | 797e |
| 2. WP (Cri) No. 1086 of 2002, order dated 26-11-2007 (Bom), <i>Raghuvansh Dewanchand Bhasin v. State of Maharashtra</i> | 794g |
| 3. (1993) 2 SCC 746 : 1993 SCC (Cri) 527, <i>Nilabati Behera v. State of Orissa</i> | 800c, 800d, 801a |
| 4. (1985) 4 SCC 677 : 1986 SCC (Cri) 47, <i>Bhim Singh v. State of J&K</i> | 800a |
| 5. (1983) 4 SCC 141 : 1983 SCC (Cri) 798, <i>Rudul Sah v. State of Bihar</i> | 799g, 800a-b, 800c-d, 800g |
| 6. (1976) 3 SCC 1 : 1976 SCC (Cri) 368, <i>State of U.P. v. Poosu</i> | 797e |
| 7. 242 NY 13, at 24 : 150 NE 585, at 589 (1926), <i>People v. Defore</i> | 797c |

The Judgment of the Court was delivered by

D.K. JAIN, J.— Leave granted. This appeal, by special leave, is directed against the judgment and order dated 26-11-2007, rendered by the High Court of Judicature of Bombay, in *Raghuvansh Dewanchand Bhasin v. State of Maharashtra*¹. 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 2000 from his own account.

¹ WP (Cri) No. 1086 of 2002, order dated 26-11-2007 (Bom)

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a **2.** Shorn of unnecessary details, the facts material for adjudication of the present case, may be stated thus: sometime in the year 2000, one Mr Prem Harchandrai filed a complaint, being CC No. 163/P/2000, against the appellant, a practising advocate, under Section 324 of the Penal Code, 1860 (for short “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 7-8-2002, finding the appellant to be absent, the court issued a non-bailable warrant against him returnable on 31-10-2002. *b* The warrant was forwarded to Colaba Police Station for execution. However, on 12-8-2002, on appellant’s putting in an appearance before the court the warrant was cancelled.

c **3.** On 15-8-2002, the complainant approached Colaba Police Station and insisted on the arrest of the appellant in pursuance of the said non-bailable warrant. Thereupon, Respondent 2, who at that point of time was posted as an Inspector of Police at 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 Radio Club in connection with the *d* 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. 16-8-2002 and produced the same before Respondent 2 on the same day.

e **4.** Alleging mala fides and humiliation at the hands of Respondent 2 in collusion with the complainant the appellant approached the High Court, inter alia, praying for suitable disciplinary action against Respondent 2; adequate compensation; damages and costs by the said respondent from his own pocket.

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

g “We therefore, find that there was no justification for issuance of non-bailable warrant on 7-8-2002 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 notice or a bailable warrant depending upon the facts revealed from the records. Once the warrant was cancelled on 12-8-2002, it was necessary for the court to immediately communicate the same to the police authority concerned 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 police officer concerned was categorically 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 *h* 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 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 tender the necessary apology to the petitioner for executing such warrant on the holiday, and the officer concerned 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 the affidavit filed by Respondent 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.”

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

7. Arguing the case in person, it was strenuously urged by the appellants 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 appellants had failed to appear in court on 7-8-2002. 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 court. It was submitted that having held that Respondent 2 was guilty of misconduct, the High Court failed to punish the said respondent under Sections 342 and 345 IPC.

8. It was argued that the misconduct of Respondent 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 appellants, the direction of the High Court asking Respondent 2 to pay an amount of Rs 2000 by way of costs to the appellants 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.

9. Per contra, Mr Jay Savla, learned counsel appearing for Respondent 2 submitted that since the appellants were 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 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 police station concerned is issued and forwarded directly to the police station concerned with a direction to return the said warrant to the court. But in the present case no such memo or order in writing had been received at the police station on or before 15-8-2002, when it was executed. The learned counsel submitted that the said respondent having performed his duty bona fide and in good faith, in pursuance of the order issued by the court having jurisdiction, the said respondent had not committed any illegal act warranting any action against him.

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a 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 the 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 Cardozo, J. 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."^{*}

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c 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. (Also see *State of U.P. v. Poosu*².)

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e 12. In *Inder Mohan Goswami v. State of Uttaranchal*³, 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: (SCC pp. 17-18, paras 53-55)

f "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.

h * **Ed.:** As observed by Cardozo, J. in *People v. Defore*, 242 NY 13, at 24 : 150 NE 585, at 589 (1926)

2 (1976) 3 SCC 1 : 1976 SCC (Cri) 368

3 (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259

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 theailable warrants should be preferred. The warrants eitherailable or non-ailable 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.

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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 issueailable 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-ailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-ailable warrants."

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13. We deferentially concur with these directions, and emphasise that since these directions flow from the right to life 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 behavioural patterns are bound to differ from case to case. Since discretion 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. 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 court proceedings, it was not a fit case where non-ailable warrant should have been issued by the Additional Chief Metropolitan Magistrate. In our opinion, the attendance of the appellant could have been secured by issuing summons or at best by aailable warrant. We are, therefore, in complete agreement with the High Court that in the facts and circumstances of the case, issuance of non-ailable warrant was manifestly unjustified.

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14. We shall now advert to a more anxious point viz. the conduct of Respondent 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 2 was aware that the non-ailable 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 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

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a even the complaint against the appellant was in relation to the offence punishable under Section 324 IPC. The complaint related to the year 2000. At the relevant time, the offence punishable under Section 324 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 appellant at a public place, in public view, during the course of Independence Day celebrations at Radio Club. We are convinced that Respondent 2 in collusion with the complainant played with the personal liberty of the b appellant in a highhanded manner.

15. The unfortunate sequel of an unmindful action on the part of Respondent 2 was that the appellant, a practising advocate, with no criminal history, remained in police custody for quite some time without any justification whatsoever and suffered unwarranted humiliation and degradation in front of his fellow members of the Club. Regrettably, he lost c his freedom though for a short while, on the Independence Day. Here also, we agree with the High Court that Respondent 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 d undesirable interference with the liberty of the appellant. Such a conduct cannot receive a judicial imprimatur.

16. 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 perpetrated by Respondent 2 in addition to what e has been awarded by the High Court. As aforesaid, the grievance of the appellant is that imposition of a fine of Rs 2000 on Respondent 2 is grossly inadequate. His prayer is that in addition to an adequate amount of compensation, Respondent 2 should also be prosecuted and proceeded against departmentally for his wrongful confinement.

f 17. 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 wrongdoer.

g 18. In *Rudul Sah v. State of Bihar*^A, Y.V. Chandrachud, C.J., speaking for a Bench of three learned Judges of this Court had observed thus: (SCC p. 147, para 10)

h “10. ... One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the 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.”

19. In *Bhim Singh v. State of J&K*⁵, holding the 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 *Rudul Sah*⁴, O. Chinnappa Reddy, J. echoed the following views: (SCC p. 686, para 2) a

“2. ... 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...” b

20. In *Nilabati Behera v. State of Orissa*⁶ 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 the 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*⁴ (SCC p. 147, para 10), J.S. Verma, J. (as His Lordship then was) stated as under: (*Nilabati Behera case*⁶, SCC pp. 762-63, para 17) c

“17. It follows that ‘a claim in public law for compensation’ for contravention of human rights and fundamental freedoms, 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 ‘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 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 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*⁴ and 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.” d
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(emphasis supplied)

21. 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

5 (1985) 4 SCC 677 : 1986 SCC (Cri) 47

4 *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141 : 1983 SCC (Cri) 798

6 (1993) 2 SCC 746 : 1993 SCC (Cri) 527

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proceedings and private law proceedings stated as under: (*Nilabati Behera case*⁶, SCC pp. 768-69, para 34)

- a “34. 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 Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilise 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.” (emphasis supplied)
- e 22. The power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of their 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 situation stated above, we are of the opinion that the appellant does not deserve further monetary compensation.
- f 23. 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 15-8-2002, some blame lies at his door as well.
- g Being a practising Advocate himself, the appellant 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. As noticed above, admittedly, the appellant applied and obtained a copy of such order only on 16-8-2002. Though the conduct of Respondent 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
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⁶ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 : 1993 SCC (Cri) 527

deplored, yet, strictly speaking the action of Respondent 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 2 is warranted. He has been sufficiently reprimanded. a

24. 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. b

25. 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 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 to make them aware as to the nature of the warrant that has been issued. c
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26. In our view, merely because Form 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 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 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. e
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27. In view of the foregoing discussion, no ground is made 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. g

28. However, before parting with the judgment, we feel that 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 to be adopted in all cases where non-bailable warrants are issued by the courts: h

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- 28.1.** All the High Court shall ensure that the subordinate courts use printed and machine numbered Form 2 for issuing warrant of arrest and each such form is duly accounted for;
- a* **28.2.** Before authenticating, the court must ensure that complete particulars of the case are mentioned on the warrant;
- 28.3.** The presiding Judge of the Court (or responsible officer specially authorised 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;
- b* **28.4.** 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;
- c* **28.5.** Every court must maintain a register (in the format given below at p. 804), 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;
- 28.6.** No warrant of arrest shall be issued without being entered in the register mentioned above and the court concerned 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 case concerned;
- d* **28.7.** A register similar to the one in para 28.5 supra shall be maintained at the police station concerned. The Station House Officer of the police station concerned 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;
- e* **28.8.** 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;
- 28.9.** 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 police station concerned or the officer in charge of the agency concerned;
- f* **28.10.** 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;
- 28.11.** 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
- g* **28.12.** 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 authority concerned, 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.
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Format of the Register

Remarks	<i>a</i>
The action taken as reported	<i>b</i>
Report returned on	<i>b</i>
Due date of return	<i>c</i>
Date of cancellation, if any	<i>c</i>
Date of issue	<i>d</i>
Date of judicial order directing arrest warrant to be issued	<i>d</i>
The officer/ person to whom directed	<i>e</i>
Name and Particulars of the person against whom warrant of arrest is issued (accused witness)	<i>e</i>
Case title and particulars	<i>f</i>
The number printed on the form used	<i>f</i>
Sl No.	<i>g</i>

29. 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 practise the aforesaid directions at the earliest, preferably within six months from today.

END OF THE VOLUME

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