

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL PETITION No.5860 of 2026

Between:

1. B Vijaya Sai, S/o. Late B. Lakshmana Swamy, Aged about 70 years, Occ Business, R/o. Hotel Sai Renaissance, Opp State Bank of India Kodugodi, Bengaluru - 560067, Karnataka State.

...Petitioner

AND

1. The State of Andhra Pradesh, Rep. by its Public Prosecutor, High Court of Andhra Pradesh, At Amaravati.

2. P Ernagappa, S/o. Late P. Narayana, Aged about 70 years, Occ Business, Resident of D. No. 5-17, Ganesh Circle Puttaparthi, Sri Sathya Sai District.

...Respondents

DATE OF JUDGMENT PRONOUNCED: 17.09.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

JUSTICE MAHESWARA RAO KUNCHEAM

*** HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

+ CRIMINAL PETITION No.5860 of 2026

% 17.09.2026

B Vijaya Sai, S/o. Late B. Lakshmana Swamy, Aged about 70 years, Occ Business, R/o. Hotel Sai Renaissance, Opp State Bank of India Kodugodi, Bengaluru - 560067, Karnataka State.

...Petitioner

AND

The State of Andhra Pradesh, Rep. by its Public Prosecutor, High Court of Andhra Pradesh, At Amaravati.

& Another

... Respondents

! Counsel for Petitioner : N.Ranga Reddy

^ Counsel for Respondent No.1 : Public Prosecutor

^ Counsel for Respondent No.2 : Seshadri Goalla

? CASES REFERRED : (2007) 12 SCC 1
(2012) 9 SCC 791
(2022) 10 SCC 51
2024 (14) SCC 122
(2004) 2 SCC 370
2026 SCC Online SC 865

APHC010364312026



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI**

THURSDAY, THE 17th DAY OF SEPTEMBER 2026

PRESENT

**THE HONOURABLE SRI JUSTICE MAHESWARA RAO
KUNCHEAM**

CRIMINAL PETITION NO: 5860 OF 2026

Between:

1. B Vijaya Sai, S/o. Late B. Lakshmana Swamy, Aged about 70 years, Occ Business, R/o. Hotel Sai Renaissance, Opp State Bank of India Kodugodi, Bengaluru - 560067, Karnataka State.

...Petitioner

AND

1. The State of Andhra Pradesh, Rep. by its Public Prosecutor, High court of Andhra Pradesh, At Amaravathi.

2. P Ernagappa, S/o. Late P. Narayana, Aged about 70 years, Occ Business, Resident of D. No. 5-17, Ganesh Circle Puttaparthi, Sri Sathya Sai District.

...Respondents

Petition under Section 437/438/439/482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court pleased to Set Aside the Docket Order dated 10.6.2026 Passed in STC No. 05 of 2025 on 16.06.2026 on the file of the Judicial Magistrate of First Class Puttaparthi, Sri Satya Sai district and pass

IA NO: 1 OF 2026

Petition under Section 482 of Cr.P.C. and 528 of BNSS praying that, in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay all further proceedings by recalling the warrants issued against the petitioner through Docket Order dated 10.6.2026 passed in STC No. 05 of 2025 on 16.06.2026 on the file of the Judicial Magistrate of First Class, Puttaparthi, Sri Satya Sai District and pass

Counsel for the Petitioner: N RANGA REDDY

Counsel for the Respondents: SESHADRI GOALLA

Counsel for the Respondents: PUBLIC PROSECUTOR

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**CRIMINAL PETITION NO: 5860 of 2026****The Court made the following Order:**

Instant Criminal Petition, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, has been filed on behalf of the petitioner herein (Accused), seeking to set aside the docket Order dated 16.06.2026 in STC No.5 of 2025 on the file of the Judicial Magistrate of First Class, Puttaparti, Sri Satya Sai District.

2. Heard Sri N.Ranga Reddy, learned counsel for the petitioner, learned Assistant Public Prosecutor appearing on behalf of respondent No.1-State, Sri Golla Seshadri, learned counsel for respondent No.2 and perused the entire material available on record.

3. Petitioner is accused in STC No.5 of 2025 on the file of the Judicial Magistrate of First Class, Puttaparti, Sri Satya Sai District and is facing charges for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881.

4. Principal grievance of the petitioner is that, the impugned order, whereby Non-Bailable Warrant (NBW) was issued against

the petitioner straightaway, was passed without adhering to the procedural pre-requisites and without due regard to the ground realities and in contravention of statutory as well as the well-settled legal principles and, therefore, the same is liable to be quashed.

5. On the other hand, learned counsel for respondent No.2/complainant submits that petitioner, being accused under the Negotiable Instruments Act, has filed the instant petition only with a view to protract the litigation, without filing recall petition. He further supports the order under challenge by contending that learned Judge has statutory power to issue NBW. Hence, according to him, there is no illegality in issuance of NBW straightaway against the petitioner/accused.

6. Core issue involved in the instant *lis* is whether the issuance of Non-Bailable Warrant, without prior issuance of summons or bailable warrant and also without recording reasons for such issuance, is legally sustainable or not?

7. Learned counsel for the petitioner asserts that petitioner is aged about 70 years and is a permanent resident of Karnataka State. He further submits that despite the petitioner having a

permanent address at Karnataka, the notice was issued to Andhra Pradesh address, where the petitioner does not reside. He contends that issuance of NBW against the petitioner infringes right to life and, as such, trial Court ought not to have issued Non-Bailable Warrant against the petitioner without considering the overall facts and circumstances, more so, without recording any specific reasons.

8. It is apparent from the postal cover that the notice was addressed to Andhra Pradesh address and the said endorsement stands as “unclaimed”, whereas the address shown in the cause title in the complaint filed by the respondent No.2 as well as the cause title before this Court clearly indicate the address of the petitioner as Karnataka. Further, impugned order does not disclose any specific reasons for issuing Non-Bailable Warrants against the petitioner/accused at the first instance.

9. In this factual matrix, it is apt to note the relevant statutory regime, for the sake of a comprehensive view:

Section 90 of BNSS (2023): *Issue of warrant in lieu of, or in addition to, summons:*

90. *A Court may, in any case in which it is empowered by this Sanhita to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest-*

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

10. It is apt to note that Section 90 of the Bharatiya Nagarik Suraksha Sanhita, 2023, which corresponds to Section 87 of the Code of Criminal Procedure, 1973, empowers the Court to issue a warrant of arrest, either in lieu of or in addition to summons, but the Court must record reasons in writing while issuing the same. A warrant may be issued where the Court has reason to believe that the person has absconded or will not obey the summons, or where, despite due service of summons, the person fails to appear before the Court and without providing a reasonable explanation for such absence. Thus, the provision is intended to secure the appearance of a person before the Court and is not meant to be invoked mechanically.

11. For better understanding, Section 91 of BNSS-Power to take bond or bail bond for appearance is extracted hereunder:

Section 91 of BNSS-Power to take bond or bail bond for appearance:

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer

may require such person to execute a bond or bail bond for his appearance in such Court, or any other Court to which the case may be transferred for trial.

12. Section 91 of the Bharatiya Nagarik Suraksha Sanhita, 2023, corresponding to Section 88 CrPC., empowers the Court, to secure the person's future appearance before the Court and enables the Court to obtain an undertaking for such appearance rather than necessarily resorting to arrest. A Non-Bailable Warrant (NBW) issued by a Court is mainly to ensure that the accused appears before it. It is not meant to punish the accused.

13. Section 72 of the BNSS-Form of warrant of arrest and duration:

(1) Every warrant of arrest issued by a Court under this Sanhita shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

14. Under Section 72(2) BNSS (corresponding to Section 70(2) Cr.P.C), an NBW continues to remain in force until it is executed or cancelled by the Court which issued it. Therefore, when an NBW has been issued, the accused can approach the same Court that issued the warrant and request its recall or cancellation by explaining the reasons for his non-appearance. The Court should consider the circumstances of the case, the reason for the

absence, the conduct of the accused and the need to secure his presence before deciding whether to recall the warrant. Thus, Section 72(2) BNSS provide the primary basis for seeking recall of an NBW, while Section 528 BNSS preserve the inherent powers of the High Court in appropriate cases.

15. At this juncture, it is relevant to note the above statutory provisions in almost the same phraseology as Cr.P.C, 1973, which have been interpreted by the constitutional Courts in their vivid expressions in the light of the constitutional ethos.

16. Three-Judge Bench of the Hon'ble Apex Court in ***Inder Mohan Goswami v. State of Uttaranchal***¹, dealt with the scope of inherent powers of the High Court under Section 482 of the Cr.P.C., (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, BNSS, 2023) and discussed the circumstances in which non-bailable warrants can be issued (framed strict judicial guidelines regulating the issuance of Non-Bailable Warrants (NBWs)), the relevant para reads as under:

“When non-bailable warrants should be issued

“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:

¹ (2007) 12 SCC 1

- *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.”*

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-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.*

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 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 liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.”*

17. Subsequently, in the year 2012, in ***Raghuvansh Dewanchand Bhasin v. State of Maharashtra***², the Hon'ble Supreme Court of India held that the Courts must be cautious and careful while dealing with the issuance of non-bailable warrants as it has direct nexus with the individual's personal liberty under Article 21 of the Constitution of India and emphasized the need to strike balance between the rights, liberties and privileges of an

² (2012) 9 SCC 791

individual and interests of the State., wherein relevant portion is extracted hereunder:

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

“...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.”

18. Further Apex Court in ***Satender Kumar Antil v. Central Bureau of Investigation***³, held that the issuance of non-bailable warrant is a coercive measure which interferes with the personal liberty of an individual and therefore, it must not be resorted to mechanically or as a matter of routine. And further reiterated that ordinarily, the Court should first issue summons, followed by a bailable warrant, and only thereafter a non-bailable warrant, if the circumstances so warrant. The power to issue a warrant must be exercised after proper application of mind and by recording reasons. An NBW may be justified where the Court has reason to believe that the person is unlikely to voluntarily appear, cannot be served with summons, or may cause harm to someone, if not immediately taken into custody.

19. In ***Sharif Ahmed v. State of UP***⁴, the Supreme Court reiterated that the issuance of non-bailable warrant is a serious coercive measure which directly affects the personal liberty of an individual and, therefore, cannot be resorted to mechanically or as a matter of routine. The Court emphasized that an NBW should be issued only upon the Magistrate being satisfied that the circumstances of the case warrant such a stringent process,

³ (2022) 10 SCC 51

⁴ 2024 (14) SCC 122

particularly where there is a reasonable apprehension that the accused may evade the process of law or interfere with the course of justice. Relevant portion is as under:

78. "...It is a settled position of law that non-bailable warrants cannot be issued in a routine manner and that the liberty of an individual cannot be curtailed unless necessitated by the larger interest of public and the State. While there are no comprehensive set of guidelines for the issuance of non-bailable warrants, this Court has observed on several occasions that non-bailable warrants should not be issued, unless the accused is charged with a heinous crime, and is likely to evade the process of law or tamper/destroy evidence."

20. In view of the aforesaid statutory provisions and the object and purport underlying the same, there can be no manner of doubt that the statutory scheme confers upon the Courts or other judicial forums the power and jurisdiction to issue both bailable and non-bailable warrants. However, mere conferment of such power does not permit to exercise it in a routine or mechanical manner. The Courts are required to consider the totality of the facts and circumstances of each case and satisfy itself as to the necessity of resorting to such coercive process. Discretion vested in the Court must, therefore, be exercised judiciously, cautiously and for reasons to be recorded.

21. On the one hand, exercising judicial power is a solemn duty coupled with great responsibility, and on the other hand, it

requires the judicial officer to exercise such power with due care, caution and a sense of accountability. A judicial officer is required to appreciate the facts and circumstances of each case in their proper perspective and to ensure that the discretion vested by law is exercised for advancing the cause of justice and not as a matter of routine. Every judicial or quasi-judicial order, particularly one having impact on the liberty of an individual, must reflect due application of judicial discretion and disclose the reasons which weighed with the Court in arriving at such a decision. The authority vested to authorized Judicial Forum, therefore, carries with it an equally important duty to exercise such authority fairly, judiciously and in accordance with the settled principles of law only, but not on their respective personal notions at all.

22. It is apt to note that the object of the issuance of a Non-Bailable Warrant is essentially to secure and compel the appearance of the accused before the Court and to ensure that the proceedings are not frustrated by the deliberate evasion or non-appearance of the accused. It is a coercive process intended to secure the attendance of the accused where the Court has sufficient reason to believe that the presence cannot otherwise be secured. Issuance of such a warrant is coercive and preventive in

nature, intended solely to secure the presence of the accused and to ensure the effective and uninterrupted conduct of the judicial proceedings by using judicial discretion.

23. In ***National Insurance Co. Ltd. v. Keshav Bahadur***⁵, the Supreme Court held that exercise of discretion is not synonymous with arbitrary or absolute power. Discretion signifies the exercise of judgment, skill and wisdom and must be exercised judicially, reasonably and with due care, having regard to the relevant facts and circumstances. The granting of discretion by statute carries with it a corresponding responsibility to exercise such power in accordance with the principles of reason and justice and not according to personal whim, caprice or private opinion. Thus, statutory discretion is required to be legal, regular and guided by established principles of law. Relevant para is as under:

9. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and the truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within

⁵ (2004) 2 SCC 370

the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office, ought to confine himself. (Per Lord Halsbury, L.C., in Sharpe v. Wakefield [1891 AC 173:(1886-90) All ER Rep 651 (HL)]). Also see S.G. Jaisinghani v. Union of India [AIR 1967 SC 1427].

10. The word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently, therefore, a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore where the legislature concedes discretion it also imposes a heavy responsibility.

"The discretion of a judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, passion. In the best it is oftentimes caprice; in the worst it is every vice, folly, and passion to which human nature is liable," said Lord Camden, L.C.J., in Hindson and Kersey [(1680) 8 How St Tr 57].

11. If a certain latitude or liberty is accorded by statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of the discretion, and prevents it from being wholly absolute, capricious, or exempt from review.

24. It is well settled that the issuance of a Non-Bailable Warrant must be preceded by due consideration of the facts and circumstances warranting such coercive process. The order issuing an NBW must contain reasons indicating why such process has become necessary, as the recording of reasons is an essential safeguard against the arbitrary or mechanical exercise

of judicial discretion. Mere issuance of an NBW without disclosing the reasons for resorting to such coercive measure cannot be sustained in law.

25. Very recently, in ***Rohit Chaturvedi v. State of Uttarakhand & Ors***⁶, the Hon'ble Supreme Court strongly reiterated that recording reasons is an essential requirement of a valid decision, particularly, where the decision affects a person's rights or liberty. The Apex Court held that recording reasons is not an empty formality; it safeguards against arbitrariness, demonstrates application of mind, and ensures transparency, fairness and accountability, besides enabling effective judicial review. The relevant para is as under:

“5.1. It is a settled principle of law that any order affecting the rights of a person and particularly his liberty, must be with reasons and must reflect due application of mind. Recording of reasons is not an empty formality; it is a safeguard against arbitrariness and ensures transparency, fairness, and accountability in decision-making. The absence of reasons renders it bald and makes it impossible to ascertain whether relevant factors were duly considered or not.”

26. It is important to understand that judicial functions are different from ordinary administrative functions; while performing

⁶ 2026 SCC Online SC 865

judicial duties, the individual must act with great care, caution, and sensitivity, as judicial decisions can directly affect the rights and interest of individuals. From a narrow perspective, these duties may be seen as ceremonial and straightforward. However, in reality, judicial functions involve a high degree of responsibility and require careful, independent and thoughtful decision-making process.

27. All in all, the power to issue a Non-Bailable Warrants (NBWs), is indisputably conferred on the Courts, judicial forums and statutory tribunals however, the said powers must be exercised judiciously, cautiously and upon due application of mind, and not in a routine or mechanical manner. The trial Court, while exercising such power, should adopt a pragmatic and justice-oriented approach, keeping in view the facts and circumstances of each case, the object and purpose of the statutory provisions and the well-settled principles governing the issuance of warrants as detailed supra.

28. Accordingly, this Court is inclined to dispose of the Criminal Petition with the following directions:

- i. Order dated 16.06.2026 in STC No.5 of 2025 on the file of the Judicial Magistrate of First Class, Puttaparti, Sri

Satya Sai District is liable to be interdicted, and the same is hereby recalled;

ii. Petitioner shall appear before the learned trial Court within a period of two (02) weeks from the date of receipt of copy of this Order; and

iii. It is made clear that the petitioner shall continue to appear before the trial Court without any retractions, unless personal appearance of the petitioner is specifically dispensed with by due process of law.

Interlocutory applications, if any, pending shall stand closed.

JUSTICE MAHESWARA RAO KUNCHEAM

Date: 17.09.2026

Note: LR Copy to be marked.

Issue C.C. by 17.09.2026

B/o.

PSA

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

CRIMINAL PETITION NO: 5860 of 2026

Date: 17.09.2026

Note: LR Copy to be marked.
Issue C.C. by 17.09.2026

B/o.
PSA