

(2016) 10 GUJ CK 0037
In the Gujarat High Court

Case No : Criminal Revision Application No. 796 of 2016

Kalpesh Mahendrabhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 20-10-2016

Acts Referred:

Citation : (2017) 345 ELT 35

Hon'ble Judges : S.G. Shah, J.

Bench : Single Bench

Advocate : Shri Sujay Katawala with Hardik P. Modh, Advocates, for the Appellant; Shri K.P. Raval, APP, for the Respondent

Final Decision : Disposed Off

Judgement

S.G. Shah, J. (CAV) - Rule. Learned APP Mr. K.P. Raval waives service of notice of rule for respondent No. 1 State.

2. Heard Mr. Sujay Katawala, learned Counsel for Mr. Hardik P. Modh for the petitioner and learned APP, Mr. K.P. Raval for the respondent-State.

3. The petitioner has challenged the order dated 13th June, 2014 below letter-cum-application dated 13th June, 2014 by the Detective Police Inspector of Economic Offences Branch, C.I.D. Crime, Gandhinagar Camp at Meghaninagar, Ahmedabad. By such letter-cum-application dated 13th June, 2014 the Investigating Officer of Gandhinagar Zone Police Station, I-C.R. No. 3 of 2014 registered under Sections 406, 420, 465, 467, 468, 471, 474, 477(a) and 114 of IPC read with Section 46 of the Banking Regulation Act has prayed to the Chief Metropolitan Magistrate of Ahmedabad City to issue a warrant as per Section 70 of the Criminal Procedure Code.

4. Since detailed argument has been advanced in Criminal Revision Application No. 535 of 2016 by the learned Senior Counsel Mr. Nirupam Nanavati which is heard on the same day, and its is practically objected and argued by learned Public prosecutor Mr. Mitesh Amin, learned Advocate of both the side in this

matter have practically adopted the full set of arguments advanced in Criminal Revision Application No. 535 of 2016 in addition to factual details and submissions of facts and circumstances of this case. Therefore, the legal issues are common in both the revision petitions.

5. Learned Counsel for the petitioner has submitted that the petitioner is Managing Director of the company and therefore he is not personally liable for what is done by the company during its activities through other persons. It is also submitted that the company manufactures the World's most integrated Fiber Glass Reinforced Plastic Composites (FRP/GRP) and resins for major industrial sectors such as Aerospace, Defence, Renewable Energy, Wind Energy, Railways, Chemical Processing, Oil and Gas and other sensitive areas. It is also stated that the company has established reputation as a major supplier to key industries by manufacturing first quality material constantly. It is further stated that since the company required the funds for installation of various plants and machinery and working capital for new projects to manufacture carbon fibers and therefore, company had called several banks and though several banks have advanced different amount to the company and though ICICI Bank the complainant in the present case is not the lead bank and though only smallest amount is in dispute with ICICI Bank, when company could not fulfil its commercial commitment and thereby goes in financial crisis, ICICI Bank alone has filed a complaint. Therefore, it is submitted that the complaint is purely of civil nature when company could not repay the amount of loan and other advances received by it from various banks and therefore there is no reason to prosecute the petitioner for non-payment of amount of loan by the company. All factual details and advances is well described in detail in the Memo of Revision Petition but at present since issue is regarding cancellation of warrant only and when this Court has not to decide either the fate of the complaint or any other issue touching the merits of the complaint except confirming the presence of petitioner in judicial proceeding and investigation, all such facts and details are not recalled herein.

6. However, it is also submitted that;

- (a) investigation is practically over and charge-sheet if filed,
- (b) no case of forgery is made out within the meaning of Section 464 of IPC,
- (c) out of consortium of seven banks only ICICI bank has lodged the FIR and none of the other banks including the lead bank namely Punjab National Bank, State Bank of India and Allahabad Bank have initiated any prosecution against the company and its Directors.
- (d) the company has already paid Rs. 1000 crores towards loan and Rs. 630 crores towards interest amount,
- (e) valuation of the properties of the company is approximately Rs. 1800 to Rs. 2000 crores and therefore there is no reason for any of the bank to initiate

criminal proceedings, at the most they may initiate civil proceedings to recover their dues if company is unable to pay their dues in time, and

(f) for that purpose in fact proceedings before the Debt Recovery Tribunal under SARFAESI Act is already been initiated and that it is in the case that the petitioner outright cheated the bank for their personal gain and thereby caused wrongful loss to the company.

7. Therefore, it is submitted that when petitioner has not taken any disadvantage in any manner whatsoever then there is no reason to initiate criminal proceedings.

8. It is also submitted that so far as other accused are concerned the competent Court including this High Court has released all other accused on bail. For the purpose, the learned Counsel relies upon observation of the Co-ordinate Bench of this Court in one such order of bail dated 12th January, 2015, in Criminal Misc. Application for Regular Bail No. 19662 of 2014 wherein the Co-ordinate Bench has considered the above submissions of the petitioner to release the co-accused on bail.

9. It is also borne in mind that while seeking warrant, the prosecution has erroneously claimed that the petitioner was avoiding investigation or trial. In fact the application does not disclose a single instance of summons which the petitioner has defaulted. It is not the case of the prosecution that petitioner was conveyed to remain present before the investigating agency, but either he refused or failed to appear before the investigating agency. Therefore, issuance of non-bailable warrant directly without prior intimation is bad in law.

10. It is also submitted that even if allegation in FIR and charge-sheet are taken on their face value, no offence have been remotely made out of criminal breach of trust, cheating or forgery. Mere inability to repay the loan amount within time in terms if crimes would not constitute an offence mainly when loan amount is already secured by way of hypothecation of valuable assets of value of much more than outstanding amount.

11. If we peruse the application, it becomes clear that the only allegation in the application is to the effect that when Investigating Officer tried to arrest the accused, he could not be found at his last known address, he is not available for investigation or arrest and, thereby, he is absconding and avoiding arrest and probably he has hidden in some other State and, thereby, there is no possibility to arrest him in near future and, therefore, when police of other State is demanding the warrant by the Court in English so as to arrest such person who are hiding in such other State, there is need of warrant under Section 70 of the Code of Criminal Procedure, 1973 in English. It is also contended that petitioner was not available at his residence on different dates which is listed in such application viz.; 27, 28, 29 May, 2016 and 10, 12, 28, 29 of June, 2016. When application is seeking warrant under Section 70 of the Code of Criminal Procedure, 1973, (For short "Code") initially provision of Section 70 needs to be

referred here, which reads as under :-

Form of warrant of arrest and duration :-

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

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

12. The bare reading of above provision makes it clear that it is providing the manner in which warrant is to be issued i.e. it shall be in writing and signed by the Officer of the Court and shall bear the seal of the Court and that it shall remain in force until it is cancelled by the Court or until it is executed. Therefore, practically, it seems that, though the Investigating Officer wants a warrant as provided under Section 70 of the Code of Criminal Procedure, 1973, enabling provisions to issue such warrant is under Section 73 of the Code of Criminal Procedure, 1973, which reads as under :-

"Section 73. Warrant may be directed any person. -

(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable, offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71."

13. It is undisputed fact that though there is reference in sub-section (1) of Section 73 of the Code of Criminal Procedure, 1973 to issue warrant against "any person," it is also certain that such "any person" is thereafter explained in the same section, whereby, it is stated that arrest of "any escaped convict" or "proclaimed offender" or "any person who is accused of a non-bailable offence and is evading arrest."

14. Whereas, in sub-section (3) of Section 73 of the Code of Criminal Procedure, 1973, it is made clear that when the person against whom such warrant is issued, is arrested, he should be taken before a Magistrate having jurisdiction, unless security is taken under Section 71.

15. Section 71 of the Code of Criminal Procedure, 1973 empowers the Court to direct security to be taken. Thereby, any Court issuing a warrant for the arrest of any person may in its discretion direct by intimation if such person executes a

bond, with sufficient sureties for his attendance before the Court at a specified time and, thereafter, only otherwise directed by the Court, the Officer to whom the warrant is directed shall take such security and shall release such person from custody.

16. Section 76 of the Code of Criminal Procedure, 1973 provides that person arrested is to be brought before Court without delay confirming that the Police Officer or other person executing a warrant of arrest shall, subject to the provisions of Section 71 as to security without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person, with a proviso that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

17. Though there is provision of Section 80 in the Code regarding procedure on arrest of person against whom warrant is issued making it clear that unless the Court which issued the warrant is within 30 kilometers of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction, the arrest was made or unless security is taken under Section 71, he should be taken before such Magistrate or District Superintendent of Police or Commissioner; it seems that the proviso of Section 71 regarding twenty-four hours is being misused by the Investigating Agency and, therefore, such situation is arising in so many cases when police asked for warrant prior to filing of charge-sheet.

18. The core issue in the present petition is practically to the effect that whether Court is empowered to issue warrant pending investigation and direct the accused to be arrested for the purpose of investigation though charge-sheet is not yet filed before the Court and, thereby, Court has not taken cognizance. Thus, Court can issue warrant only after taking cognizance and to proceed further in accordance with law.

19. It seems that probably, there is practise to issue such warrant by so many Courts and, therefore, it is submitted that the police of other States are seeking such warrant to be issued by an order of the Court. However, the fact remains that irrespective of practices being followed on different places by different Courts and different authorities, whenever, issue is raised before the Judicial Authority, Judicial Authority has to rely solely upon the provisions of law and settled legal position that may be emerging from the decision of Hon''ble Supreme Court of India on the subject. Thereby, irrespective of any inconvenience or necessity of Investigating Agency or any-one else, even if, benefit is to be extended to the accused, then, there is no option but to extend such benefit to the accused irrespective of nature and gravity of crime or nature of the offender.

20. One such glaring example is the case of Dawood Ibrahim Kaskar whose identity does not need any details, but the full Bench of the Hon''ble Supreme

Court of India has, in similar situation decided the issue in his favour by cancelling the warrant. The case under reference is of State through CBI v. Dawood Ibrahim Kaskar reported in 2000 (10) SCC 438 details of which would be taken care hereinafter in sequence of facts and case law.

21. The other core issue is the concept of "Custody" of such accused when he has preferred this petition. It is settled legal position that once a person surrenders to the jurisdiction of the Court of law, he is to be treated either in custody or care/protection/shelter of the Courts where he is praying some equitable reliefs based upon the constitutional rights. The reference to the case of Sundeep Kumar Bafna v. State of Maharashtra reported in 2014 (16) SCC 623 would be material, wherein, meaning of custody is elaborated confirming the view taken in this judgment.

22. In the present case, though during the argument, it is emphasized that Trial Court has no jurisdiction to allow such an application to issue a warrant to arrest and produce the petitioner before the Police Officer pending investigation, the sum and substance of the Revision Petition is to the effect that when petitioner is very well before the Judicial Authority, it cannot be said that petitioner is absconder and, therefore, there is no reason to issue warrant against him. It is further submitted that during such period of almost more than one month, petitioner has exhausted his legal rights to quash the complaint or to get anticipatory bail but since he could not succeed in any such prayer, it cannot be said that he is absconding and, therefore, warrant is required to be issued as per impugned order. If we peruse the impugned order, it becomes clear that learned Metropolitan Magistrate, Ahmedabad City, has purely relied upon the statement of the later application and one judgment cited before it in the case of Nazzimudin Fakrudin Kazi v. State of Gujarat reported in 2016 (1) GLR 208.

23. As against that petitioner is relying upon the case of Narayan @ Narayan Sai @ Mota Bhagwan S/o Asharam Bapu v. State of Gujarat reported in 2013 (0) AIJEL - HC 231437. Therefore, this Court has no option but to discuss the rival submission before deciding the case finally by referring all relevant judgments on the subject.

24. In view of the above legal position practically the factual details of the case are not much material at this stage because it is undisputed fact that there is a FIR against the petitioner and that he could not be found by the investigating agency to complete the investigation for pretty long time. However, as submitted and pleaded it is not because of the reason that petitioner does not want to submit himself to the judicial proceedings and system of the country but only because of the reason that he was having his business outside India and therefore he has not only to travel outside India but he has to stay outside India for his earning activities. Therefore, it cannot be said that petitioner is absconding as pleaded and submitted by the respondent. The perusal of the application dated 13th June, 2014 by the Investigating Officer based upon which warrant is issued makes it clear that basically the dispute is of civil nature in not

repaying the advance and loan though there is allegation that some documents are forged by the petitioner or his accomplice. However, at this stage in absence of prima facie evidence regarding forgery it cannot be presumed that there is evidence regarding forgery by the petitioner. But in any case when petitioner has come forward by the revision petition challenging the impugned order now it can be said that he is not hiding himself or absconding from the investigation. Therefore, when sooner or later petitioner has to surrender to the judicial authority for facing the trial either on his own or he would be arrested by the Police and therefore, before such arrest when petitioner has surrendered to the judicial proceeding by filing this revision disclosing that he need to cooperate with the investigating agency so as to enable the investigating officer to complete the investigation, it is clear that if petitioner has not committed any offence then he has no reason to be afraid to appear before the investigating officer and to submit his case with an attempt to convince the investigating agency that either he has not committed any offence or there is no evidence against him to prove that he has committed any offence. Therefore, when petitioner has realized that hiding from investigation would certainly result into issuance of such warrant maybe because of the aforesaid practise has been followed and also on account of different decisions on such issue by different Courts, at present what is material for us is to secure the presence of the petitioner, it would be appropriate to pass necessary orders to confirm his presence rather than to dismiss this revision and then to wait till he is arrested, more particularly, when he is out of country.

25. In any case, the law is well settled that the Court cannot issue warrant in aid of investigation prior to filing of charge-sheet and it is also well settled position that once litigant is before the Court by filing of any proceeding, then, he is to be treated in judicial custody and in that case, it would be appropriate for the concerned Court to pass appropriate direction to such petitioner to appear before the competent authority in aid of investigation and to ensure that investigation is completed. During such exercise, the only concern of accused may be regarding the powers of the Investigating Agency to keep him in police custody at least for twenty four hours. Therefore, if that part is taken care of, the entire issue would be resolved with respect to all cases without multiplicity of proceedings in nature of present litigation.

26. For the purpose, following citations needs to be referred here :

(1) Inder Mohan Goswami v. State of Uttaranchal reported in 2007 (12) SCC 1, wherein, the full bench of Hon"ble Supreme Court of India has categorically held that;

"47. Before parting with this appeal, we would like to discuss an issue which is of great public importance, i.e., how and when warrants should be issued by the Court It has come to our notice that in many cases that bailable and non-bailable warrants are issued casually and mechanically. In the instant case, the court without properly comprehending the nature of controversy involved and without

exhausting the available remedies issued non-bailable warrants. The trial court disregarded the settled legal position clearly enumerated in the following two cases.

48. In *Omwati v. State of UP & Another* - (2004) 4 SCC 425, this court dealt with a rather unusual matter wherein the High Court firstly issued bailable warrants against the appellant and thereafter by issuing non-bailable warrants put the complainant of the case behind bars without going through the facts of the case. This Court observed that the unfortunate sequel of such unmindful orders has been that the appellant was taken into custody and had to remain in jail for a few days, but without any justification whatsoever. She suffered because facts of the case were not considered in proper perspective before passing the orders. The court also observed that some degree of care is supposed to be taken before issuing warrants.

49. In *State of U.P. v. Poosu & Another* - (1976) 3 SCC 1 at para 13 page 5, the Court observed :

"13?... Whether in the circumstances of the case, the attendance of the accused respondent can be best secured by issuing a bailable warrant or non-bailable warrant, is a matter which rests entirely in the discretion of the court. Although, the discretion is exercised judiciously, it is not possible to computerize and reduce into immutable formulae the diverse considerations on the basis of which this discretion is exercised. Broadly speaking, the court would take into account the various factors such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and the State".

Personal liberty and the interest of the State

50. Civilized countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence 1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights 1966 all speak with one voice - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilized society. Sometimes in the larger interest of the Public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when :

- * 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 courts 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.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant.

58. On consideration of the totality of facts and circumstances of this case, the impugned judgment and order of the High Court cannot be sustained."

(2) State through CBI v. Dawood Ibrahim Kaskar reported in 2000 (10) SCC 438, wherein, the full bench of Hon"ble Supreme Court of India has categorically held that;

"6. From the impugned order we find that before the Designated Court it was

submitted on behalf of CBI that since it was making further investigation into the offences in respect of which charge-sheet has earlier been submitted and since the presence of the respondents, who were absconding, was absolutely necessary for ascertainment of their roles, if any, in commission of the offences, it was felt necessary to file the applications. It was further submitted that only after warrants and/or proclamations as prayed for were issued, that it (CBI) would be able to take further coercive measure to compel them to appear before the Investigating Agency for the purpose of intended further investigation. According to CBI under Section 78 of the Code and Section (3)(a) of TADA the Designated Court was fully empowered to issue warrants of arrest and proclamations. In rejecting the above contention the Designated Court held that after cognizance was taken in respect of an offence process could be issued to the persons accused thereof only to compel them to face the trial but no such process could be issued by the Court in aid of investigation under Section 73 of the Code.

12. The moot question that now requires to be answered is whether a Court can issue a warrant to apprehend a person during investigation for his production before police in aid of the Investigating Agency.

13. Chapter VI of the Code which is captioned as "processes to compel appearance" consists of four parts part A relates to Summons; part B to warrant of arrest; part C to proclamation and attachment and part D to other rules regarding processes. Part B, with which we are primarily concerned in these appeals, has in its fold Sections 70 to 81. Section 70 speaks of the form in which the warrant to arrest a person is to be issued by the Court and of its durational validity. Section 71 empowers the Court issuing the warrant to direct the officer who is to execute the warrant, to release that person on terms and condition as provided therein. Section 72 provides that a warrant shall ordinarily be directed to one or more police officers but if its immediate execution is necessary and no police officer is immediately available it may be directed to any other person for execution.

24. Now that we have found that Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and is evading arrest, we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen hand-writings etc. However, in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release

him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167(3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorization for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the Court solely for the production of the accused before the police in aid of investigation."

(3) *Vikas v. State of Rajasthan* reported in AIR 2014 SC (Supp) 1124, wherein, the full bench of Hon"ble Supreme Court of India has categorically held that;

"14. The Constitution of India is the ground norm the paramount law of the country. All other laws derive their origin and are supplementary and incidental to the principles laid down in the Constitution. Therefore, Criminal Law also derives its source and sustenance from the Constitution. The Constitution, on one hand, guarantees the Right to Life and Liberty to its citizens under Article 21 and on the other hand imposes a duty and an obligation on the Judges while discharging their judicial function to protect and promote the liberty of the citizens."

27. Though law is well settled by above referred decisions of the Hon"ble Supreme Court of India, it seems that when learned Single Judge in case of *Nazzimudin Fakrudin Kazi* (supra) held that warrant under Section 70 can be issued at the stage of investigation if a person accused of non-bailable offence is evading arrest. However, it is also clarified in the judgment that the person was arrested in execution of warrant and was required to be brought before the Magistrate who may then follow appropriate course available under Section 167 or Section 439 of the Code and, thereby, confirmed the order by Chief Judicial Magistrate issuing warrant against the petitioner in that case.

28. The learned Single Judge has pointed out the difference of opinion in such reported case and in the case of *Narayan @ Narayan Sai @ Mota Bhagwan* (supra), wherein, another learned Single Judge of this High Court has taken a contrary view prior to such reported judgment relying upon the case of *State through CBI v. Dawood Ibrahim Kaskar* (supra) and thereby confirming that warrant cannot be issued in aid of investigation, as prayed for. It is submitted that though this judgment has been cited before the learned Single Judge in the case of *Nazzimudin Fakrudin Kazi v. State of Gujarat* (supra) without disclosing that how it has been distinguished or how it is not applicable when learned Single Judge is taking a different view, practically, learned Single Judge has to refer the matter to the Larger Bench. At present, I do not wish to enter into such controversy regarding reference of such case to the Larger Bench but it is clear

that thereby learned counsel is suggesting that if at all this Court is of the view to rely upon the judgment in the case of Nazzimudin Fakrudin Kazi (supra) then the Court should refer the matter to the larger bench for appropriate directions in view of conflicting decisions. However, when I am relying upon the judgments of Hon"ble Supreme Court of India referred herein above, I do not see any reason to rely upon the judgment of Nazzimudin Fakrudin Kazi (supra), more particularly, when in my opinion, in such cases, in addition to quashing the order of issuance of warrant, what is required is direction to the petitioner who is consider in judicial custody, to appear before the Investigating Agency safeguarding his apprehension of being arrested and keep in police custody for twenty four hours considering it as their absolute right and thereby taken it as granted by Investigating Agency that they are entitled to detain a person for twenty four hours irrespective of nature of crime and person concerned.

29. It is also evident from above discussion and provision of law that in any case, in compoundable offences, non-bailable warrant cannot be issued but initially even Investigating Officer has to issue a notice to the accused to remain present before him as provided under Section 160 of the Code which empowers the police officers to require attendance of any person before him though the word used in the section is witness. In general, there is necessity to initially issue such notice and on non-compliance of such notice, bailable warrant and then only non-bailable warrant or otherwise police has got inherent power to inquiry from anybody, if there is sufficient evidence with him regarding commission of particular offence by any such person, for which order of warrant by judicial authority is not required at all.

30. However, as aforesaid, such issue can be resolved by quashing the order of issuance of warrant in aid of investigation but with direction to the petitioner to remain present before the Investigating Officer to see that investigation is completed and in that case Investigating Officer may arrest the petitioner and may be produced before the Magistrate immediately at the earliest without waiting for twenty four hours considering the fact that period of twenty four hours is not mandatory and must as provided under Section 76 of the Code, which provides that such person shall be produced before the competent Court without unnecessary delay. Thereby, what is emphasized in Section 76 is production without unnecessary delay but with a rider that such delay should never be beyond twenty four hours. Therefore, it cannot be said that police is permitted to keep the accused in its custody for twenty four hours irrespective of all other issues like nature and gravity of offence, so also nature of accused. Thereby, though there is no classification amongst criminals, it is quite clear that if some hardcore criminal is arrested and if investigation is ongoing to get certain information or evidence, then, there may be delay in production of person before the Court but in cases where offence is on paper, probably, there is no need to keep the accused in police custody beyond office hours or at least overnight. At the most, if Investigating Agency is of the opinion that continuous police interrogation is required to avail certain information and evidence then, in that

case, police can certainly apply for remand.

31. A reference to the case of Kamal Kishin Lougani v. Senior Intelligence Officer in Criminal Misc. Case No. 2023 of 2016 by Division Bench of Kerala High Court would be relevant, wherein, in similar situation, the Court has issued several directions and practically based upon such directions, the Investigating Agency has considered that no further order is required. A reference to the order dated 16th September, 2016 in the case of Pravin Kanabhai Kandoriya v. State of Gujarat by Hon''ble Supreme Court of India in Special Leave to Appeal (Criminal) No. 6885 of 2016 is also material, wherein, by such order dated 16th September, 2016, Hon''ble Supreme Court of India has also though rejected the application for anticipatory bail and though quashing petition was also rejected, extended a benefit against arrest for four weeks with a direction to the accused to appear before the Court and to file Regular Bail Application. It is also relevant to recollect the order dated 22-7-2016 in Special Leave to Appeal (Criminal) No. 5350 of 2016 by Hon''ble Supreme Court of India in the case of Kamlesh Lakhubhai Falia v. State of Gujarat, wherein also, though benefit of anticipatory bail has been refused by the Hon''ble Supreme Court of India, the Hon''ble Supreme Court of India has directed the petitioner to surrender before the Trial Court and to make an application for bail with a direction to decide the same at the earliest in accordance with law.

32. Therefore at present what is material is not the consideration of minute details as disclosed by the petitioner in detail but the only thing which is to be considered at present is to confirm the presence of the petitioner either for investigation or even in criminal trial which may be initiated against him pursuant to charge-sheet No. 3 of 2015, dated 20th February, 2015, filed by the I.O. which is registered as case No. 99 of 2015, wherein present petitioner is shown as absconding accused. However, as disclosed herein above it is quite clear and obvious that before disclosing the petitioner as a absconder the investigating officer has not taken care of relevant provisions of law in confirming the presence of the petitioner and therefore even the impugned order issuing warrant against the petitioner without following other provisions of law before issuance of such warrant, it can certainly be said that there is material irregularity which will result into illegality inasmuch as though investigating agency can execute the warrant through proper channel, it will cost a lot to the public exchequer, whereas now it is clear that otherwise though there may be some criminality, practically dispute is mainly regarding non-payment of advance and loan and when petitioner is ready and willing to surrender and in fact by filing this revision he has been available, it would be appropriate to allow him to appear before investigating officer and the concerned Court on his own but with certain strict conditions so also certain reliefs in his favour.

33. Considering the regular exercise of filing of repeated and different petitions for seeking permission to travel beyond India and precious time of Court hours being consumed in such proceeding, it would be appropriate to consider all such

possible directions in this order so as to avoid filing of repeated applications on small issues and for different directions, more particularly considering the fact that petitioner is residing outside India and investigating agency has tried to serve a warrant through other agencies but could not succeed. It cannot be ignored that on information regarding issuance of warrant the petitioner has came forward on his own before this Court and thereby, he has surrendered himself to the judicial proceedings.

34. In view of above facts and circumstances, when there is material irregularity and illegality in the impugned judgment, by issuance of warrant, without serving notice or bailable warrant and that too in aid of investigation without direction to produce the accused before the appropriate Court, impugned order dated 13-7-2014 by the Metropolitan Magistrate, Ahmedabad is hereby quashed and set aside but with following directions;

(A) The petitioner shall appear before the Investigating Officer within a period of four weeks from today with prior intimation to the Investigating Officer. Such appearance shall be between 10.00 am and 6.00 pm during which Investigating Officer shall complete the investigation of the case.

(B) If at all, Investigating Officer requires the presence of petitioner again on any other day, then, petitioner shall continue to appear before the Investigating Officer as and when called upon by the Investigating Officer but only between 10.00 am and 6.00 pm.

(C) Petitioner can apply for bail before the competent Court. Such Bail Application is to be decided by the Trial Court considering observations in this judgment as well as order of bail in favour of the accused. However, petitioner shall not be arrested until further orders by the competent Court.

(D) Petitioner should be free to leave India after furnishing bail bonds but on condition to file an undertaking before the Trial Court that he will appear either personally or through advocate during the active hearing of the case without fail and that he shall deposit Rs. Five Lakhs in addition to bail bonds and surety as may be ordered by the Trial Court, for the purpose that petitioner shall appear before the competent Court on his own.

(E) Considering the necessity of the petitioner, to travel from U.K. to India, when petitioner is willing to appear before Police Authorities/Trial Court as and when required, it would be appropriate for the investigating officer to issue suitable direction to the immigration authorities to the effect that petitioner may not be detained or arrested and be allowed to approach the investigating agency. For the purpose, petitioner is free to serve copy of this order to concerned authorities by direct service.

35. This application stands disposed of with the above observations and directions. Rule is made absolute to the aforesaid extent. Direct Service is permitted.