



2023:DHC:8473



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st November, 2023

+ **CRL.M.C. 527/2023**

FAHIM

..... Petitioner

Through: Mr.Aditya Aggarwal, Mr.Naveen
Panwar and Mr.Jayseeka Viridi,
Advocates.

versus

STATE

..... Respondent

Through: Mr.Shoaib Haider, APP for State with
SI Rahul, PS. Seelampur.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure 1973 (CrPC), seeking setting-aside of the order dated 3rd January, 2023, whereby the learned ASJ was pleased to issue Non-Bailable Warrants (NBWs) for the production of the petitioner and the order dated 17th January, 2023, whereby the learned ASJ rejected the application of the petitioner for cancellation of the NBWs and thereby remanded him to judicial custody.

2. *Vide* the order dated 25th January, 2023, passed by the predecessor Bench, the petitioner was ordered to be released from judicial custody. The petitioner had already been granted bail by this Court *vide* order dated 14th



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September 2020 passed in BAIL APPLN. 2261/2020.

3. I have heard counsels for the parties and perused the material on record.

4. Rule 3, Part C (i), Volume III, Chapter 1 of the Delhi High Court Rules states that issuance of warrants interferes with the personal liberty of a person and the Magistrate should take care that no greater hardship than is necessary is caused to the person concerned.

5. A Co-ordinate Bench of this Court in *Afzal Ahmad v. State*, 2022 SCC OnLine Del 256, has observed that the Trial Court should not have issued NBWs against the petitioner on account of non-appearance of the petitioner in the early hours of the day.

6. Another Co-ordinate Bench of this Court in *Naresh Kumar v. State*, (2006) 131 DLT 678, held that the Trial Courts should not take an extreme step of issuing NBWs during the first call and in the pre-lunch hours of the day.

7. This Court is in full agreement with the aforesaid views taken by the Co-ordinate Benches. On a lot of occasions due to variety of reasons, including the traffic situation in the city, various parties are unable to reach the Court when the matter is called for the first time, but reach later.

8. It is to be noted that in the present case, the petitioner did appear before the Trial Court on 3rd January, 2023 when the matter was listed, however, the petitioner reached the Trial Court after the matter had already been called. As per the petitioner, he reached late due to heavy traffic because of a political rally. An application for cancellation of the NBWs was moved on behalf of the petitioner immediately on the same date. However,



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the said application was dismissed by the Trial Court *vide* order dated 17th January, 2023.

9. In my considered view, there was no justification for the Trial Court to issue an NBW on account of non-appearance of the petitioner on 3rd January, 2023 in the early hours of day. Further, keeping in mind that the application for cancellation of the NBW was filed on the same date along with an explanation for non-appearance, the same should have been considered immediately by the Trial Court. The reasons given by the Trial Court in the order dated 17th January, 2023 dismissing the application for cancellation of the NBW are wholly unsustainable. Accordingly, both the impugned orders dated 3rd January, 2023 and 17th January, 2023 are set aside.

10. The present case highlights a growing trend of the Trial Courts going against the judgments of this Court as well as the Rules established and dismissing genuine reasons of non-appearance of the parties and issuing warrants against them.

11. The legal position in issuance of warrants is abundantly clear, however, the same is not being followed by the Trial Courts, thus, there need to be certain guidelines put in place for securing appearance of parties before the Trial Courts in accordance with law.

12. In view of the above, for the guidance of the Trial Courts in similar cases, following directions are issued :-

- i. The Trial Courts should not issue NBWs against a person on first call in the pre-lunch hours of the Court, except when there are genuine apprehensions that the person would abscond if not taken into



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- custody. Such coercive steps should be taken only post 12:30 PM.
- ii. In situations where warrants, eitherailable or non-ailable, are issued and the person appears before the Court during the course of the Court hours, the Courts should assess if the reason of non-appearance of the person was reasonable and if warranted, costs may be imposed.
 - iii. If the person is present through his authorized Advocate, warrants for appearance of the person should be issued only in exceptional circumstances, with reasons for the same being recorded in writing, especially where an application seeking exemption from personal appearance has been filed on behalf of the person.
 - iv. If an application for cancellation of NBWs due to non-appearance of the parties is filed shortly after the issuance of NBWs, the Trial Court should expeditiously consider the said application.
13. A copy of this order be forwarded to all the Principal District and Sessions Judges in Delhi for circulation to all the Trial Courts trying criminal cases.

AMIT BANSAL, J

NOVEMBER 21, 2023

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