

Court No. - 93

Case :- APPLICATION U/S 482 No. - 43214 of 2023

Applicant :- Joni

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Sayeed Saif Ullah, Sufia Saba

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj, J.

Applicant-accused has filed this petition under Section 482 Code of Criminal Procedure to challenge the order dated 14th March, 2023 passed by the Special Judge (POCSO Act), Court No. 1, Muzaffarnagar in Sessions Trial No. 402 of 2016 (State vs. Deepak etc), under Sections 376, 363, 366, 452, 504, 506 IPC and 3/4 POCSO Act as well as the subsequent orders (Annexure-3) reiterating the issuance of non-bailable warrants to secure his presence.

Learned counsel for the applicant namely Joni has submitted that in the subject trial, the applicant was extended the concession of regular bail vide order dated 20th January 2017 and since then he is regularly attending the trial proceedings. He submits that on 15th February, 2023, he had to go out of town, therefore, he instructed his counsel to move an application for exemption from personal appearance and on the said date, the applicant was exempted from personal appearance. He has drawn the attention of the Court to the averments contained in para '8' and contended that because of unavoidable circumstances, the applicant could not appear on 14th March, 2023, whereupon the trial court issued non-bailable warrants against him to secure his presence and by subsequent orders (Annexure-3), the non-bailable warrants were again issued and presently the case is fixed for 16.12.2023. He submits that the applicant is willing to join the trial proceedings, therefore, the impugned non-bailable

warrants issued against him be set aside.

In response, learned State Counsel submits that since the applicant was well aware of the trial proceedings pending against him, therefore, it was incumbent for him to put in appearance on each and every date of hearing. According to him, the applicant-accused committed a default, therefore, the trial court has rightly issued the non-bailable warrants against him to secure his presence. He prays that the application be dismissed.

Upon hearing the learned counsel for the parties and considering their submissions, this Court finds that as far as the facts are concerned, there is not much of conflict as admittedly the applicant was extended the concession of regular bail in January, 2017 and on 14th March, 2023, the non-bailable warrants were issued as he failed to appear. Of course, on 15.2.2023, he was granted exemption from personal appearance, but on the subsequent dates of hearings, there were applications by other accused persons seeking exemption from personal appearance which were allowed, therefore, even if the accused-applicant would have appeared, no effective proceedings could have taken place before the trial court in the absence of his co-accused.

Further, a perusal of the impugned order would also show that neither the concession of bail granted to him has been cancelled nor the bail bonds furnished by the applicant have been forfeited so far, and the court is only issuing non-bailable warrants to secure his presence. Many a times the accused can be prevented by a sufficient reason to put in appearance before the trial court and every such absence cannot be necessarily construed as willful or deliberate. No doubt, the accused has not given in detail the reasons resulting in his absence before the trial court, but considering the long pendency of the trial and his solitary absence,

coupled with the fact that he is willing to join the trial proceedings, this Court deems it appropriate to exercise the inherent powers under Section 482 Cr.P.C.

Consequently, it is directed that in case, the applicant appears before the trial court on or before 16.12.2023, he shall be allowed to join the trial proceedings on the same bail bonds and surety bonds furnished at the time of grant of bail.

Here it is clarified that if, the applicant fails to comply with this order, the application shall be deemed to be dismissed.

With the above observations, the application is disposed of.

Order Date :- 28.11.2023

Brijesh