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

Date of Decision: May 25, 2015

+ CRL.M.C.2282/2015

STATE

..... Petitioner

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent-
State with Inspector Sanjay
Bhardwaj, SHO Prashant Vihar

versus

ROBIN@BABLOO

..... Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Crl.M.A.No.7999/2015 (Exemption)

Allowed subject to all just exceptions.

Crl.M.C.No.2282/2015

Petitioner-State is aggrieved by impugned order of 14th May, 2015 whereby trial court has directed personal appearance of DCP (Outer) in the court. The reason given in the impugned order for directing so is that Commissioner of Police has been repeatedly intimated by the trial court that senior police officers were hesitant to appear in the Court as and when required, so request for exemption by DCP (Outer) stands rejected by the impugned order vide which bailable warrants in the sum of

₹5,000/- with Notice Under Section 350 Cr.P.C. has been issued against DCP (Outer). Mr. Vinod Diwakar, Additional Public Prosecutor for petitioner-State has placed on record copy of trial court's order of 1st May, 2015 to submit that directions issued vide aforesaid order were complied with as clarificatory response of 1st May, 2015 has been filed by DCP (Outer).

It was submitted by Mr. Vinod Diwakar, Additional Public Prosecutor for petitioner-State that aforesaid response (*Annexure P-2*) in relation to trial court's order of 1st May, 2015 is satisfactory and so issuance of bailable warrants with Notice under Section 350 Cr.P.C. with a specific direction to personally appear, issued to DCP (Outer) is unwarranted. It was pointed out that if at all Notice is to be given to police officials/officers, then it has to be under Section 60/122 of *Delhi Police Act* and not under Section 350 Cr.P.C. Reliance is placed upon decisions in *State of Uttar Pradesh & Ors. v. Jasvir Singh & Ors.* (2011) 4 SCC 288, *R.S.Singh v. Uttar Pradesh Malaria Nirikshak Sangh & Ors.* (2011) 4 SCC 281, *CrI.M.C.No.226/2007 Naresh Kumar v. State* 31st October, 2012 and *CrI.M.C.No.174/2015 N Gnanasambandan v. State of NCT of Delhi & Anr.* 18th March, 2015 to submit that judicial restraint ought to be exercised in summoning senior Government Officers. Lastly, it was submitted that respondent-accused had jumped parole and had committed offence on 15th April, 2015 and a few days ago, respondent-accused has been re-arrested and put in jail and so issuance of Notice to DCP (Outer) deserves to be quashed.

Apex Court in *Jasvir Singh* (supra) has held that summoning of senior officers of the Government should be when absolutely necessary. In this

regard, pertinent observations are as under:-

“Requiring the presence of the senior officers of the Government in Court should be as a last resort, in rare and exceptional cases, where such presence is absolutely necessary, as for example, where it is necessary to seek assistance in explaining a complex policy or technical issues, which the counsel is not able to explain properly. The Court may also require personal attendance of the officers, where it finds that any officer is deliberately or with ulterior motives withholding any specific information required by the Court which he is legally bound to provide or has misrepresented or suppressed the correct position.”

Upon hearing and on perusal of impugned order, trial court's order of 1st May, 2015 and the decisions cited, I do find that since respondent-accused had committed serious offence while on parole and had jumped parole therefore, the anxiety of trial court to ensure that respondent-accused has to be put behind bars is understandable, but the impugned order does not show that response (*Annexure P-2*) filed in relation to trial court's order of 1st May, 2015 has been considered. Therefore, in the light of the decisions cited, this Court is of the considered opinion that direction to DCP (Outer) to put in personal appearance and issuance of bailable warrants with Notice under Section 350 Cr.P.C. to him was uncalled for.

In view of aforesaid, impugned order 14th May, 2015 is hereby quashed. It is expected that the trial court shall exercise its powers to seek personal appearance of the senior police officers in the light of the scope and ambit of the power of the Court as reiterated by Apex Court in *Jasvir Singh* (supra) case.

With aforesaid directions, this petition is disposed of.

(SUNIL GAUR)
JUDGE

MAY 25, 2015
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