

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

% Order delivered on: July 08, 2015

+ **Crl. M.C. No.2466/2015**

STATE Petitioner
Through Mr.Sanjay Jain, ASG along
with Mr.Vinod Diwakar, APP
versus

ROBIN @ BABLOO Respondent
Through None.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the State under Section 482 Cr.P.C. for setting aside the order dated 25th May, 2015 passed by Additional District and Sessions Judge-3, Rohini Court, New Delhi in FIR No.672/2008, under Section 302 IPC, Police Station Prashant Vihar, titled as 'State versus Robin @ Babloo' and to set aside the notice under Section 350 Cr.P.C. and for expunging adverse remarks against the police.

2. Brief relevant facts of the case are that the convict Robin @ Babloo, whose conviction for the offence under Section 302 IPC in FIR No.672/2008, PS Prashant Vihar was upheld by this Court was released on parole on 9th January, 2015 under the orders of this Court.

3. Upon receipt of information by Sessions Court from the Jail Superintendent that after being released on parole on 9th January, 2015, the convict had not surrendered back to Jail on 7th February, 2015, the court came into action and SHO was directed by order dated 13th February, 2015 to appear in person and file report regarding the attendance of the convict during the period of parole at PS Prashant Vihar in terms of condition mentioned in parole order. He was also called upon to explain vide order dated 16th February, 2015 as to what action he had taken after gaining knowledge from the court that the convict had fled from justice. SHO sought Non Bailable Warrants (NBWs) from the court.

4. By order dated 23rd February, 2015 the NBWs were issued against the convict through the SHO who was also directed to file the status report as the factum of filing of SLP was not mentioned. The police, however, failed to nab the convict by executing the NBWs.

5. The trial court was not satisfied with the explanation of SHO. Therefore by order dated 13th March, 2015 the court made the following observations against the SHO Prashant Vihar:

'It is very surprising that despite the fact that SHO is aware of the fact that convict has jumped parole and that too in a murder case and in the given circumstances when his appeal before Hon'ble High Court was also dismissed, the SHO has not taken the matter seriously. It was expected from the SHO that when he had got information from this court regarding jumping of parole, he should have constituted the team for arrest of the convict. Earlier when NBWs were issued the SHO could send only one HC Naresh Kumar at the given address and again

when NBWs were reissued he did the same thing. The report is being filed as a routine general matter. He has not furnished any report w.r.t. intimation to Special Cell or Crime Branch through DCP, Outer District as per his own versions made on the last date of hearing that he would send the detailed particulars of the convict to the aforesaid authorities of police. Keeping in view of the fact that SHO was called to appear personally on the last date of hearing, he should have been more vigilant and careful while filing the report and should have been personally present before this court, but unfortunately he could send one of his Sub Inspectors in the pre lunch session and when insisted by this court to call SHO, he sent Additional SHO in the after lunch session despite the fact that he was apprised of the seriousness of the situation on the last date of hearing.

From the perusal of the entire proceedings, right from the information to SHO regarding the jumping of bail by the convict, it appears that the SHO is not capable of handling the situation and accordingly a copy of this order be sent to the DCP (Outer) to do the needful for the arrest of the convict Robin @ Babloo. The DCP shall depute an officer not below the rank of ACP in his district and the said ACP shall report about the fresh NBWs to be issued by this court against the Robin @Babloo. The DCP (Outer) is also directed to advise and counsel the SHO Prashant Vihar for his callous attitude towards such serious matters as ultimately it is the prime duty of the SHO to taken care of court cases.

Issue NBW against convict Robin @ Babloo. NBWs may be sent directly from the office of DCP, Outer District without any intervention of SHO PS Prashant Vihar. The ACP deputed by the DCP shall report about the NBWs on the next date of hearing by personally appearing before this court. The DCP, Outer District shall file the report regarding the counselling and advise being addressed to

SHO PS Prashant Vihar in terms of this order on the next date of hearing”.

From the aforesaid order it is clear that the SHO, PS Prashant Vihar was not found fit for handling the situation and accordingly DCP (Outer) was directed to do the needful and was directed to depute an officer not below the rank of ACP for execution of NBWs against the fleeing convict. The warrants were ordered to be sent directly to the office of DCP (outer) without any intervention of the SHO Prashant Vihar. The DCP (Outer) was directed to file report.

6. On 31st March, 2015, it was again noticed by the trial court that the NBWs were unexecuted. Fresh NBWs were issued against the convict Robin @ Babloo in terms of earlier orders.

7. When the matter was taken up on 1st May, 2015 the trial Court was stunned to get information from the police in the court itself that the convict after his release from parole had committed another murder of the son of the deceased and complainant of this case on 15th April, 2015 for which case FIR No.408/15 under Sections 302/365 IPC was registered at PS KNK Marg. It appears that the trial court was very perturbed and felt that it was careless attitude and inaction on behalf of Police. Certain remarks were passed by observing as under:

“I am reminded of the proverb which sums up the entire inaction of the police. It goes that 'Nero was fiddling while the Rome burning'.

The judicial conscience of this court is pained at the way the police has acted in this matter. The police has taken the issue so lightly that the son of the complainant became the next victim at the hand of the convict.

The son of the complainant was murdered by the convict while on parole on 15.04.2015 and this has happened despite the fact that this court immediately after the receipt of the wireless message from the jail regarding non reporting by the convict after his expiry of parole period took suo moto cognizance of the matter and directed the police to initiate action in the month of February and March itself vide order dated 16.02.2015.

When the heart and mind the police officer more particularly the Sr. Officers of the police turns cold, the first causality is innocent citizen of this society. Right from the SHO to DCP, nobody could understand the seriousness of the issue despite continuous errands on the part of this court to direct them to awake and run for the arrest of the convict. Unfortunately the police has not been able to exhibit any sensitivity which resulted in another death at the hands of the convict allegedly. The most shameful part of this story is that when the SHO was directed by this court to arrest the convict initially vide order dated 23.02.2015, he could send only one HC Naresh to execute the NBWs at the residence of the convict as if the convict would be waiting for the police to share of a cup of tea with the said Head Constable before his arrest in execution of NBWs issued by this Court. What a ridiculous action, one can't even imagine from a person holding the rank of a Station House Officer. Active action on the part of SHO could have saved the life of the son of the complainant, but he has simply been given an advisory that too when directed by this court to DCP to counsel him.

Unfortunately, seemingly only a little action could follow when this court directed the DCP to shift the baton from SHO to some ACP. It was statutory obligation on the part of the District Captain of the police that he himself should have directions to weathercock rather than waiting for the wind to blow from this court. One may wonder how many deaths of the family members of complainant would follow for the non arrest of such desperate convict and for the lackadaisical attitude of the police. Being the guardian of the law and order, the Sr. Officers of the police should have immediately taken steps to save the life of the family of the complainant or the eye witnesses of the case in which the fleeing convict was jailed, but surprisingly nothing of this sort exhibited by either the SHO or the ACP, even after getting orders from this court in the month of March, 2015.”

8. The trial court felt that subordinate police officers are only passing the buck and running from their statutory obligation and therefore, on the said date i.e. 1st May, 2015 an order was passed directing DCP (Outer) to appear in person and explain the court as under:

- i) As to what action for the protection of the family of the complainant / eye witnesses had been taken immediately after the receipt of the order of this court dated 13.03.2015 as it is only after the receipt of this order that the convict is alleged to have murdered the son of the complainant in the month of April 2015.
- ii) As to what action for protection of family / eye witnesses have been taken after the registration of FIR No. 408/15, u/s. 365/302/34 IPC PS KNK Marg dated 15.04.2015 which was registered pursuant to the alleged murder of the son of the complainant.

iii) As to what steps have been taken to arrest the convict.

With the observations that this court is not only concerned with the rights of the accused, but also rights of the ordinarily citizens of the society particularly when the Hon'ble Apex Court as well as the Hon'ble High Court of Delhi are seriously concerned over the rights of the victim / witnesses / complainant not only during investigation / trial but also for the post judgment period, let copy of the order dated 23.02.2015 & 13.03.2015 and this order sent to the DCP (Outer): Fresh NBWs be issued against the convict to be executed through the ACP.

9. On 14th May, 2015, the reply was filed by DCP (Outer) through ACP but he did not appear before the trial court and sought exemption from his personal appearance due to exigency of official duty. However, no specific official exigency was mentioned by ACP before court. Therefore, the request for exemption from personal appearance of the DCP (Outer) was rejected. The trial court passed the following order:

“Vide order dated 01.05.2015 the DCP (Outer) was called to appear in person. The said order is self explanatory as to why the DCP was called. DCP has though filed the reply through ACP, but has requested that due to exigency of official duty, he won't be able to appear in the court today and has requested for exemption from personal appearance. No specific official exigency has been mentioned.

It has been observed that whenever the Sr. Police officers are called by this courts, in almost every matter exemption from personal appearance is being sought by the officers on the ground that due to official exigencies, they are unable to appear in the court.

The Sr. Police officers though may be busy, but they always tend to bypass even the extreme serious matters whenever called by this court whereas the court cases should be at the top in their list of priorities. It has been repeatedly intimated by this court to the Commissioner of Police that the senior officers are hesitant to appear in the courts as and when required. It appears that the DCP in this matter is reluctant to appear for the reasons best known to him. Request for exemption from personal appearance of the DCP (Outer) stands rejected.

Let BWs to the tune of Rs.5,000/- along with notice u/s 350 Cr. P.C be issued against the DCP (Outer) through the Joint Commissioner of Police (Northern Range). Copy of this order as well as the order dated 23.02.2015, 13.03.2015 & 01.05.2015 be sent to the Joint Commissioner of Police (Northern Range).

In response to the notice u/s 446 Cr. P.C the surety has filed an application in which he has sought cancellation of surety bond and to deposit the surety amount. The surety is stated to have deposited the FDR at the time of surety given for the accused before jail superintendent. Before further consideration on this application, let the original FDR as well as the original bond and other papers be called from the jail.

Put up on 25.05.2015 for appearance of the DCP (Outer) District in terms of order dated 01.05.2015.”

10. The petitioner approached this Court for setting aside the order dated 14th May, 2015 by filing of petition being CrI.M.C. 2282/2015 under Section 482 Cr.P.C. In the said petition on 25th May, 2015, this Court passed the following order:

“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 Rs.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 Nirishak Sangh & Ors.* (2011) 4 SCC 281, Crl.M.C.No.226/2007 *Naresh Kumar v. State* 31st October, 2012 and Crl.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 filed, 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.”

11. The said order was pronounced after lunch. The case of the petitioner is that it was informed to the trial court about the order orally that this Court was going to pass the order post lunch. However, it appears that the trial court had already passed the order before lunch on that date and the matter was kept for appearance. The contention of the petitioner is that the trial court ought to have waited for the outcome of the order to be passed by this Court. It is evident that the trial Court after having the knowledge about the order passed the separate order on that date.

12. It is the admitted position that this Court by order dated 25th May, 2015 quashed the order dated 14th May, 2015 passed by the trial Court. It was also observed in the said order that the 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.

13. In view of the setting aside the order dated 14th May, 2015, this Court does not wish to make any observation as the said order dated 25th May, 2015 has been passed by the coordinate

Bench in the matter. Full respect has to be given to the said order. Even this Court has also the same view that the trial court should exercise its power to seek personal appearance of the senior police officers as reiterated by Apex Court in ***State of Uttar Pradesh & Ors. vs. Jasvir Singh & Ors.***, (2011) 4 SCC 288, which reads 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 presently 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.”

14. The law laid down by the Supreme Court in the case of ***Jasvir Singh*** (supra) is that requiring the presence of the senior officers of the government in court should be as a last resort in rare and exceptional cases where the Court felt that the officer is deliberately or with ulterior motives withholding any specific information required by the Court. In the present case on 1st May, 2015 information was given to the Court that the convict after his release from parole had committed another murder of the son of the deceased on 15th April, 2015. No doubt the convict was rearrested on 24th May, 2015.

15. On 25th May, 2015, when DCP did not appear, the court made the following observations:

“Aforesaid order dated 01.05.2015 categorically shows that the DCP (Outer) was ordered to be called when his presence was necessarily felt by this court. On the next date of hearing i.e. 14.05.2015 through the DCP (Outer) filed the reply, but sought his exemption on the grounds that due to official exigency he won't be able to appear in the court. The request of DCP (outer) for exemption from appearance was rejected by this court and B/Ws and notice under section 350 Cr. P.C. was ordered to be issued against the DCP (outer) through the Joint Commissioner (North Range).

Today the Joint Commissioner has filed the report. Unfazed by the seriousness of the situation, he has sent back the warrants against the DCP (Outer) unexecuted. He was simply directed to get the warrants and notice under section 350 Cr. P.C. executed against the DCP (Outer). He was involved by this court in the episode not only to apprise him of the inaction on the part of district captain of police and his subordinates, but also to maintain the hierarchical respect in the police cadre as subordinate police officers should not be sent for execution of warrants against their senior police officer.

Unfortunately the Joint Commissioner (North Range) also appears to be bird of the same feather, who rather executing the warrants and notice under section 350 Cr. P.C. against DCP (Outer) appears to be more enthusiastic in his approach to get the appearance of the DCP (Outer) skipped before this Court and have raised his hands for execution of process against DCP (Outer) on the grounds that the appeal has been preferred. No details of any appeal or stay (if any) has been filed by the Joint Commissioner (North Range), he has rather created hindrance in the execution of administration of justice and

has become a road block. This is because without even assuring himself as to whether stay has been granted by Hon'ble superior courts against the order of this court, he callously and enthusiastically decided not to execute the warrants. Instead of directing and advising his subordinate DCP (Outer), he took the sword in his hands just to kill all canons of justice. Rather he himself should have reported to this court about his advise to his subordinates senior police officials in the given circumstances when he was sent with copy of all afore discussed orders of this courts. The Joint Commissioner (North Range) had made a mockery of the judicial process. Instead I would like to say that all the police officers right from Joint Commissioner rank up to the lowest rung have joined their hands together to sabotage the orders of this court.

This court is using so much time of the court hours and also beyond that as this court was apprehensive of the fact that when the convict after jumping the parole has killed the son of the complainant, he would be able to put his anger on the complainant and the complainant may become his next victim who is reported to be putting her abode at Punjab.

Surprisingly the Joint Commissioner (North Range) had failed even to appreciate that this court has passed repeated directions to the police w.e.f February 2015 and so on till this date, but it paid no heeds on the blocked ears of the police and the convict was successfully able to commit another murder on 15.04.2015 as came to light in this court from the police itself during hearing. The Joint Commissioner (North Range) have failed to appreciate that even after getting all the orders of this court in this case, the police being specially trained for the job could not sniff that the convict may satisfy his lust by killing the members of the complainant family. The joint commissioner (North Range) has further failed to

appreciate the concern of this court as mentioned in the previous orders that one may wonder as how many deaths of the family member of the complainant would follow for the non arrest of the convict.

Coming back to home page, this court is in deep sense of anguish over the conduct of police officer right from the rank of Joint Commissioner of Police (North Range) upto his lowest rung. In case now the warrants against DCP are ordered to be executed through Commissioner of Police, he may again come up with some new excuses for skipping the appearance of the DCP (Outer). Having lost faith and having considered the disobedient attitude of the senior police officers, this court is feeling helpless in such a situation and have got no option but to seek indulgence of the executive Govt. of NCT of Delhi who are directly working under the democratically elected government.

Let the B/Ws to the tune of Rs.5000/- against the DCP (Outer) and notice under Section 350 Cr.P.C. be executed through the Principal Home Secretary, Govt. of NCT of Delhi with directions to him to return the process on or before 30.05.2015. Copy of this order, order dated 18.02.2015, 23.02.2015, 13.03.2015 & 01.05.2015, 14.05.2015 be sent to the Home Secretary, Govt. of NCT of Delhi.

The ACP Prashant Vihar was under bounden duty to file the status report as earlier he was deputed by the DCP (outer). He is absent. B/Ws be issued against him to be executed in the same manner and agency as directed for the DCP (outer).

The bail bond and FDR of the surety received from jail. The bank manager, Union Bank, Tihar Jail, New Delhi is directed to send an amount of Rs.15000/- in cash before this Court after attaching the FDR having a/c No.6239152669. Original FDR be sent to the bank

manager for compliance for 30.05.2015. Copy of FDR be retained.”

16. The above said observations were made by the trial Court when the order passed by this Court on the same date after lunch was not noticed by the trial Court who in the order dated 25th May, 2015 expressed its anguish over the conduct of police officer right from the rank of Joint Commissioner of Police (North Range) upto his lowest rank and observed that in case now the warrants against DCP are ordered to be executed through Commissioner of Police, he may again come up with some new excuses for skipping the appearance of the DCP (Outer). Having lost faith and having considered the disobedient attitude of the senior police officers, the trial court felt helpless in such a situation and got no option but to seek indulgence of the executive Govt. of NCT Delhi who are directly working under the democratically elected government.

17. The fact of the matter is that before coming to the hand of the order passed by this Court, the bailable warrants to the tune of Rs. 5000/- against the DCP (Outer) and notice under section 350 Cr. P.C. to be executed through the Principal Home Secretary, Govt. NCT of Delhi were issued with directions to him to return the process on or before 30th May, 2015.

It was also directed by the trial court that ACP Prashant Vihar was under bounden duty to file the status report as earlier he was deputed by the DCP (Outer). He was absent. Bailable warrants be issued against him to be executed in the same

manner and agency as directed for the DCP (Outer). The bail bond and FDR of the surety received from jail. The bank manager, Union Bank, Tihar Jail, New Delhi was directed to send an amount of Rs. 15000/- in cash before this court after attaching the FDR having a/c. No. 6239152669. Original FDR was sent to the Bank Manager for compliance for 30th May, 2015 and the copy of FDR was retained.

18. Many decisions have been referred on behalf of the petitioner. The law is well settled on the issue of disparaging remarks. Reliance is placed on the following decisions:-

- i) In ***State of U.P vs. Mohd. Naim*** (1964) 2SCR 363 [Para 11], it was held that in the matter of making disparaging remarks against the person or authorities whose conduct comes into consideration before courts of law in cases decided by them, it is relevant to consider a) whether the party whose conduct is in question is before the court or has opportunity of explaining or defending himself; b) whether there is evidence on record bearing on that conduct, justifying the remarks c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.
- ii) In ***Niranjan Patnaik vs. Shashi Bhushan Kar and Another*** (1986) 2 SCC 569 [Para 24], it was held that that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before the Courts of law unless it is necessary for the decision of the case,

as an integral part thereof to animadvert on that conduct.

- iii) In the case of ***Dr. Raghubir Saran vs. State of Bihar and Anr.***, AIR 1964 SC 1, the Supreme Court held as under :

“Whatever may be the degree of impact, the result of expunging remarks from a judgment is that it derogates from its finality. A judgment of a lower court may be wrong; it may even be perverse. The proper way to attack that judgment is by bringing it under the scrutiny of the superior court and getting the judgment of the lower court judicially corrected. The inherent power that the High Court possesses is, in proper case, even though no appeal or revision may be preferred to the High Court, to judicially correct the observations of the lower court by pointing out that the observations made by the Magistrate were not justified or were without any foundation or were not justified or were wholly wrong or improper. The contrary view infringes the fundamental principle of jurisprudence that a judgment made by a court; however inferior it may be in the hierarchy, is final and it can only be modified in the manner prescribed by the law governing such procedure. AIR 1954 Bom 65 (66) (FB), Approved.

Every judicial officer must be free to express his mind in the matter of the appreciation of evidence before him. The phraseology used by a particular judge depends upon his inherent reaction to falsehood, his comparative command of the English language and his felicity of expression. There is nothing more deleterious to the discharge of judicial functions than to create in the mind of a judge that he should conform to a particular pattern which may, or may not be, to the liking of the appellate Court. Sometimes he may overstep the mark. When public interests conflict, the lesser should yield to the larger one. An unmerited and undeserved insult to a witness may have to be tolerated in the general interests

of preserving the independence of the judiciary. Even so, a duty is cast upon the judicial officer not to deflect himself from the even course of justice by making disparaging and undeserving remarks on persons that appear before him as witnesses or otherwise. Moderation in expression lends dignity to his office and imparts greater respect for judiciary. But occasions do arise when a particular judge, without any justification, may cast aspersions on a witness or any other person not before him affecting the character of such witness or person. Such remarks may affect the reputation or even the career of such person. In my experience I find such cases are very rare. But if it happens, I agree with the Full Bench of the Bombay High Court that the appellate Court in a suitable case may judicially correct the observations of the lower Court by pointing out that the observations made by that Court were not justified or were without any foundation were wholly wrong or improper. This can be done under its inherent power preserved under s. 561-A of the Code of Criminal Procedure. But that power must be exercised only in exceptional cases where the interest of the Party concerned would irrevocably suffer.”

19. In normal cases I agree with the submissions made on behalf of the petitioner that requiring presence of senior officer is not necessary, but the present case is a rare and exceptional one. The trial court has rightly asked the Police on 16th February, 2015 to file status report showing what action for protection of the family of the complainant/eye witnesses had been taken and what action was taken against the convict. Ultimately, it resulted into another murder of an innocent son. It has been noticed that the trial court was concerned about the seriousness of the situation so that the

convict may not harm the family members of the complainant. The apprehension of the Court was correct, as the convict had committed the murder of the son of the complainant.

20. At the same time, however, it cannot be overlooked that judicial restraints and discipline are necessary to orderly administration of justice.

21. As far as the judgments referred are concerned, the law has been correctly laid down by many Courts from time to time. In the present case, it is to consider as to whether the trial Court was justified in requiring the presence of the DCP after setting aside the order dated 14th May, 2015 of the trial Court or whether the facts and circumstances of this case fall in the category of rare and exceptional cases. If the situation is examined in a meaningful manner, it appears to the Court that the presence of the DCP was necessary as the SHO and other officers involved in the matter took the direction of the Court very lightly. In the present case, it is the admitted fact that the convict after the expiry of the parole period had murdered the son of the complainant. The trial Court was not getting any response as to what steps were taken to re-arrest the convict as per the query raised by the trial Court in view of the order passed on 16th February, 2015.

22. It appears from the said impugned order that when the order was dictated, the trial Court was not aware that order dated 14th May, 2015 has been quashed by this Court. But the fact remains that there was no compliance of the direction passed on 16th

February, 2015. Had the same been complied with by the Police through IO or SHO, the Court ought not to have passed the order dated 25th May, 2015. The anguish of the trial court appears to be justified.

23. In view of overall facts and circumstances of the case, as far as the issuance of bailable warrants and notice under Section 350 Cr.P.C. is concerned, as earlier this Court on 25th May, 2015 after lunch, had quashed the order dated 14th May, 2015, the order in this regard is quashed. However, at the same time, this Court is of the view that the presence of the DCP is necessary to file the complete report from the date of release of the convict till the date of murder i.e. 15th April, 2015 as well as up to the date of re-arrest of convict i.e. on 24th May, 2015 who would personally appear before the trial court on 20th July, 2015 and satisfy the requirement of the court. Along with the DCP, SHO shall also appear before the trial court in order to assist him.

24. After compliance of the said order, the liberty is granted to the DCP to file an application before the trial Court for expunging the adverse remarks which was passed on 25th May, 2015 as the order of earlier remarks made in the order dated 14th May, 2015 has already been set aside who will consider the request of the DCP (Outer) and pass the appropriate order.

25. The petition is disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 08, 2015