

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 337 of 2016**

Mohammad Sheikh Asif S/o Late Sheikh Ramzan Aged About 36 Years R/o Kushabhau Thackery, Flat No. 7, P.S. New Rajendra Nagar, Post & Tehsil Raipur, Rev. And Civil District Raipur Chhattisgarh, Presently R/o Since 02.01.12 At Paras Nagar, Devendra Nagar Sector -1, Infront Of Aapurti Bhawan, P.S. Devendra Nagar, Post And Tehsil Raipur, Rev. And Civil Distt. Raipur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through District Magistrate Raipur, Rev. & Civil District Raipur Chhattisgarh.
2. Station House Officer Police Station New Rajendra Nagar, Rev. and Civil, District Raipur Chhattisgarh.

---- Respondents

For the Petitioner	:	Shri Arvind Shrivastava, Advocate.
For the Respondents	:	Ms. M. Asha, Panel Lawyer for the State on advance copy.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****16/03/2016**

1. Heard.
2. Issue notice to the Respondents.
3. Ms. M. Asha, Panel Lawyer accepts notice on behalf of the State/ Respondents.
4. At the outset, Learned counsel for the Petitioner submits that the matter may be disposed of finally at the motion stage itself.
5. The co-ordinate Bench of this Court vide order dated 5.9.2014 passed in Cr.M.P. No. 789 of 2014 issued a direction in paragraph 5, which is as under:

“5. Accordingly, the instant Cr.M.P. is disposed of with a direction to the petitioner that he shall now appear before the court below on 30.9.2014 i.e. the next date of hearing which has been fixed by the trial court in this case. If the warrant has not been issued, the State shall take necessary steps not to give effect to the said warrant of arrest till the next date of hearing before the trial court.”

6. As per order-sheet dated 14.10.2014, it is revealed that on 22.9.2014 the Petitioner/ accused has to appear before the Court below, but the Presiding Officer of the Court was on leave on that date in connection with official duty to attend the workshop at National Judicial Academy, Bhopal, Madhya Pradesh. Thereafter, the matter was listed on 14.10.2014. On 14.10.2014, the accused was not present and on behalf of the accused/ Petitioner an application under Section 317 sub-section (1) of the Code of Criminal Procedure, 1973 (for short 'the Code') has been filed alongwith an affidavit and medical documents. The trial Court held that as the accused was present on 22.9.2014 and on that date the next date of hearing was given as 14.10.2014 and he was absent on that date and the order of the High Court was for one opportunity and as such the trial Court cannot grant opportunity again and again. Hence, the application filed for condonation of non-appearance was rejected by the trial Court and a warrant of arrest was issued. Ultimately on 28.1.2015, the permanent warrant of arrest was issued and the record was sent to the record room with a note to keep the record safe.

7. Learned counsel for the Petitioner submits that he complied with the order of the High Court but on the next date he was not in a position to appear in person as he was ailing hence he prays for condonation of non-

appearance on the next date. His bail bonds are not forfeited and still he will cooperate with the further proceedings. He has shown *bona fides* by making his appearance before the trial Court on 22.9.2014 and if any date is given, he will comply with the order of the Court. The non-appearance of the accused/Petitioner was on the grounds of ailment and as such he may be given an opportunity to appear by allowing the instant petition.

8. Learned counsel for the Respondents/State opposed the arguments advanced on behalf of the Petitioner.

9. To appreciate the arguments advanced on behalf of the Petitioner, at the outset, relevant order-sheets of the trial Court and order of this Court dated 5.9.2014 in Cr.M.P. No. 789 of 2014 are perused.

10. On due consideration, looking to the ground of ailment urged by the Petitioner for his non-appearance, affording of an opportunity to the Petitioner to appear would serve the purpose.

11. Consequently, the instant Cr.M.P. is disposed of. The trial Court's order dated 14.10.2014 and orders followed regarding issuance of non-bailable warrant/ permanent non-bailable warrant are hereby quashed. The Petitioner is directed to remain present before the trial Court on **6.4.2016**. The trial Court is directed to record the appearance of the Petitioner and to proceed further in accordance with law in the trial of the matter.

12. Needless to mention that the Petitioner shall willfully cooperate with the rest of the trial and also in getting the matter decided as expeditiously as possible.

13. The Cr.M.P. is disposed of.
14. Registry is directed to send a copy of this order to the concerned trial Court through usual and fax modes for compliance.
15. Certified copy of the order today as per rules.

Sd/-

Chandra Bhushan Bajpai
Judge