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

+ CRL.M.C. 3496/2016 & CrI.M.A. 14750/2016 (stay)

VINOD KUMAR CHAUHAN

..... Petitioner

Represented by: Ms. Rebeca John, Sr. Adv. with
Mr. Bhavook Chauhan, Mr.
Kushdeep Gaur, Mr. Harsh
Bora, Advs.

versus

STATE THRU CBI

..... Respondent

Represented by: Mr. Sanjeev Bhandari, Spl. PP
with DSP Mr. K.S. pathania.

+ CRL.M.C. 3505/2016 & CrI.M.A. 14811/2016 (stay)

SUDHIR GUPTA

..... Petitioner

Represented by: Mr. Vishal Gosain, Ms.
Rudrani Tyagi, Advs.

versus

STATE THRU CBI

..... Respondent

Represented by: Mr. Sanjeev Bhandari, Spl. PP
with DSP Mr. K.S. pathania.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

25.11.2016

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1. Aggrieved by the orders dated 16th and 17th September, 2016 issuing non-bailable warrants, the petitioners Vinod Kumar Chauhan and Sudhir Gupta who are accused No.3 (A-3) and accused No.6 (A-6) respectively, the

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petitioners have preferred the present petition. The petitioners filed applications seeking exemption from appearance before the learned Trial Court on 16th September, 2016. In the applications the plea for seeking exemption was that the petitioners were out of station. When the Court raised further queries it was informed to the Court that A-3 was in China and A-6 was in USA. The exemption applications were strongly opposed by the counsel for the CBI on the ground that no permission was sought by the petitioners to go abroad or remain absent on the date of hearing, thus no exemption be granted. Considering the submissions of the parties the learned Special Judge issued non-bailable against all the accused as other accused were also not present and the order on charge was ready. The matter was listed for 17th September, 2016 for appearance of all the accused and pronouncement of order on charge.

2. On 17th September, 2016 again applications were filed by the petitioners seeking cancellation of non-bailable warrants and exemption from appearance wherein the learned Special Judge passed the following order in respect of A-3 and A-6:

"Report of NBWs received. As per report on NBWs, A3 and A6 are not available at the given address. It appears that A3 and A6 are evading service of warrants. Let fresh NBWs be issued against A3 and A6. CBI shall ensure execution of NBWs and shall submit report on 23.09.2016. Notice shall also be issued to sureties of A3 and A6.

This is an application moved on behalf of A6 seeking exemption from personal appearance. Since NBWs have been issued, the present application is not maintainable and same is hereby dismissed as not maintainable.

Further in the application for exemption moved on 16.09.2016 there was concealment of facts that the applicant has gone out of jurisdiction of this Court, i.e., out of this

country. Nothing as such stated in the said application. Moreover, no ground is made out for non-appearance of the applicant as it appears that applicant does not appear before the Court deliberately and intentionally.

Application for seeking exemption is also moved on behalf of A3. However, since NBWs have been issued, the application is hereby dismissed.

Application for cancellation of NBWs moved on behalf of A3 and A6. Copy of the application supplied to learned Sr. PP by counsel for applicants. Applications are kept pending. However, there is no stay with regard to the execution of warrants.

Be put up on 23.09.2016 for appearance of accused persons and for order of charge."

3. The main contention of learned counsel for the petitioners is that in the order granting bail since there was no condition that the petitioners were required to take permission for leaving the country no permission was sought. The only error in the applications seeking exemptions was that the petitioners ought to have fairly stated that they were outside India instead of stating that they were out of station. However, the learned Special Judge issued non-bailable warrants primarily on the ground that no permission was sought to leave the country which is illegal.

4. The petitioners were granted bail on 18th May, 2001 which order reads as under:

"Separate applications for bail have been moved on behalf of all the accused except accused RN Rastogi. CBI has no objection to the grant of bail. In fact, they were not arrested by CBI during the course of investigation. Charge sheet has been filed.

All the accused who have moved applications for bail are admitted to bail on their furnishing personal bonds in the sum of ₹2,50,000/- with one surety each in the like amount, failing

which remanded to judicial custody."

5. It is evident that in the order granting bail though the condition was of furnishing a personal bond and a surety bond for a sum of ₹2,50,000/-, however there was no condition imposed that the petitioners will seek permission of the learned Trial Court while leaving the country.

6. This Court had issued notice to the CBI to explain that while opposing the exemption why the plea that the petitioners left the country without permission of the Court was taken on which a status report was filed again stating that the petitioners left the country without the prior permission of the Court concerned and even without informing the Trial Court.

7. As noted above these two conditions were not imposed while granting bail. However the primary condition of bail that the accused has to appear on each date was sacrosanct in the order granting bail to the petitioner. Thus though the finding of the learned Trial Court that no permission was taken from the Court concerned is illegal, however the fact remains the petitioners ought to have informed the Court by way of an exemption application that they were not in the country or the least that was required was to inform the Court that they were going abroad so that the exemption application could be considered accordingly and the petitioners were available as and when their presence was mandatory.

8. Learned counsel for the petitioners inform that after the non-bailable warrants were issued and the order was stayed by this Court, petitioners have appeared on most of the dates except that Vinod Kumar Chauhan could not appear on two dates as he lost his father.

9. With the observation aforesaid, non-bailable warrants issued against

the petitioners are cancelled subject to the condition that they will appear before the Trial Court unless exempted and in future if they have to leave the country they will inform the Trial Court in advance.

10. Petitions and applications are disposed of. Order dasti.


MUKTA GUPTA, J.

NOVEMBER 25, 2016

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