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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5165/2017 CRL.M.A. 20344/2017**
JOHNY KUMAR HOTLA Petitioner
Through Mr. Sharda Garg, Ms. Pinki Addy,
Advs.

versus

THE STATE GOVT OF NCT OF DELHI & ANR..... Respondent

Through Mr. Kamal Kr. Ghei, APP for State
with SI Govind Singh, PS Uttam
Nagar.
None for R2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **19.12.2017**

None for the respondent no. 2 qua whom the affidavit of service was submitted previously as observed in order dated 18.12.2017. In terms of the proceedings dated 18.12.2017, the Trial Court Record has been requisitioned and received and indicates that vide proceeding dated 20.11.2017 of the LMM West, Tis Hazari Courts, Delhi in Ex. New No. 11-2016 the petitioner was taken into custody on 20.11.2017.

As observed vide proceedings dated 18.12.2017 the petitioner has assailed the impugned order dated 04.12.2017 of the learned MM, Mahila Court (West) in Execution No. 11/16 whereby an application filed by the judgment debtor i.e. the present petitioner seeking release on his incarceration for non-compliance of payment of maintenance was declined

in as much as it had been observed in terms of Section 125(1) Criminal Procedure Code, 1973 that for failure of the payment of the interim maintenance, the judgment debtor was liable to imprisonment for a period of one month, or until the payment was made sooner.

It has been submitted now on behalf of the petitioner that the petitioner now confines the prayer in the present petition seeking release of the petitioner on 20.12.2017 in as much as the period of one month in terms of Section 125(3) Criminal Procedure Code, 1973 shall expire on 20.12.2017 in as much as the petitioner was taken into custody on 20.11.2017 pursuant to the warrants of arrest issued by the Executing Court.

Learned APP for the State does not oppose the prayer made by the petitioner seeking release of the petitioner i.e. judgment debtor in Execution No. 11/16 pending before the learned MM-01 (West), Tis Hazari Courts, Delhi in terms of Section 125(3) Criminal Procedure Code, 1973. Copy of the order dated 20.11.2017 in Execution No. 11/16 to submit on behalf of the petitioner has been taken on record.

In view of Section 125(3) Criminal Procedure Code, 1973 as the judgment debtor for non compliance of payment of interim maintenance can be kept in incarceration only for a period of one month as directed thereby, the petitioner is hereby directed to be released in Execution No. 11/16 on 20.12.2017.

However, the rest of the proceedings in relation to the recovery of maintenance as per law before the learned MM-01 (West), Tis Hazari Courts, Delhi shall continue in accordance with law.

The petition is disposed of accordingly.

Copy of this order be sent to the Superintendent Jail, Delhi and to the

learned Trial Court.

The Trial Court Record be returned.

Copy of the order be given *Dasti* under the signatures of the Court Master.

ANU MALHOTRA, J

DECEMBER 19, 2017/MK