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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.A. 109/2018 & CrI.M.A. Nos. 1656-59/2018, CrI.M.B. Nos.
182/2018, 347/2018

RANJAN KASHYAP

..... Appellant

Through: Mr. Rajeev Kapoor, Adv.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Ms. Rajdipa Behura, SPP for CBI
with Mr. Philomon Kani, Ms. Kriti
Handa, Ms. Hansika Sahu & Ms.
Damini K., Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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16.11.2018

The appellant stood trial in the court of Special Judge (Prevention of Corruption Act) in criminal case no. 11/2016 (old nos. 33/09 and 39/12) on the basis of charge-sheet submitted by Central Bureau of Investigation (CBI) on conclusion of investigation into RC No.071/2009/E0002/CBI/EOU-II/N Delhi. By judgment dated 20.12.2017, he was held guilty and convicted on the charge for offences punishable under Section 120 B read with Sections 420, 468, 471 IPC and Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988. By order dated 22.12.2017, the trial Judge awarded rigorous imprisonment for three years and six months with fine of Rs. 10 lakhs against him with direction that in the event of failure to pay the fine he would undergo further simple imprisonment for six months though adding that he would be entitled to benefit of set off under Section

428 Cr.P.C. He was taken in custody by the trial court by directions in the said order on sentence passed on 22.12.2017.

The present criminal appeal was submitted in January, 2018 assailing the judgment and order on sentence. The appellant had moved an application (Crl.M.B. 347/2018) seeking suspension of sentence and release on bail. While considering the said request, by order dated 07.03.2018, the learned Judge then in seisin of the matter considered it just and proper to admit the appellant on interim bail for the period 09.03.2018 to 23.03.2018 on account of his then prevailing domestic problems. The said interim bail was extended by subsequent order dated 22.03.2018 with modified direction to him to surrender to custody on 01.05.2018.

The status of the matter against the said backdrop thereafter was noted in the proceedings on 25.07.2018 as under:-

“The appellant was admitted to interim bail by order dated 07.03.2018 with directions that he would surrender on 23.03.2018. The said interim bail was extended by order dated 22.03.2018 with modified directions that he would surrender on 01.05.2018. The matter was at that stage to come up for hearing on the appeal on 17.05.2018. Thereafter, the appellant has failed to appear. The learned Special Public Prosecutor for the respondent CBI submits that the appellant has not surrendered in jail in terms of the said earlier orders and instead has absconded. She also submits that the Special Judge, taking note of the non-compliance with the directions for surrender within the period specified had issued duress process against the appellant which had been followed by initiation of proceedings under Section 82 Cr.P.C. The issuance of duress process against the petitioner is confirmed by the report dated 03.05.2018 of the Special Judge which is on record.

The Special Judge shall take steps to secure the presence of the appellant and make a report on the next date.

Meanwhile, court notice to issue to the counsel for the appellant, returnable for 16.11.2018”.

Pursuant to the above-mentioned directions, court notice was issued to the counsel for the appellant. Mr. Rajeev Kapoor, Advocate is present in response to the said court notice and submits that he has no instructions, the appellant being not in contact.

The Special Judge has sent his report dated 12.11.2018, *inter alia*, indicating that since the presence of the appellant could not be secured pursuant to the non-bailable warrant that had been issued several times, process under Section 82 Cr.P.C. was issued against him besides notice to his surety. The surety had pleaded his inability to produce the convict (the appellant) and chose to deposit the surety amount. The appellant has been declared proclaimed offender by the trial Judge, by order dated 01.11.2018.

Against this backdrop, the course adopted by the division benches of this Court in *Mukesh vs. State 2008 SCC Online Del 877* and *Kamlesh vs. State 2009 SCC Online Del 3729* commends itself to be followed. Since the appellant who was enlarged on bail, is deliberately keeping himself away not prosecuting the appeal, it being rendered manifestly an abuse of the process of the Court, the appeal and the pending applications are dismissed.

Coercive steps will continue against the appellant to ensure that his presence is secured so that he is taken to custody to serve the remaining sentence.

R.K.GAUBA, J

NOVEMBER 16, 2018

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