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

\+ CRL.M.C.2813/2018

NAND KISHORE ..... Petitioner

Represented by: Mr.Pawan Kumar Mittal and Mr.Sohan Singh Negi, Advocates

versus

STATE ..... Respondent

Represented by: Mr.M.P.Singh, APP for the State

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

% 22.05.2018

Crl.M.A.No.9994/2018

Allowed subject to just exceptions.

Crl.M.C.No.2813/2018 & Crl.M.A.No.9993/2018

1. Notice. Learned APP for the State accepts notice.

2. Aggrieved by the order dated 8th May, 2018 and 11th May, 2018, the petitioner prefers the present petition. Petitioner is facing trial in case FIR No.413/2003 registered at PS Mehrauli. Learned counsel for petitioner states that the petitioner was regularly pursuing the said trial, however, when the matter was listed for final arguments on 8th May, 2018, the petitioner could not appear in Court and learned counsel for the petitioner also stated that he had no information about the whereabouts of the petitioner, thus, he was not in a position to address arguments. Consequently the learned Trial Court issued non-bailable warrants against the petitioner and notice to the

surety returnable for 11th May, 2018 when again the petitioner could not appear.

3. Case of the petitioner is that the petitioner is suffering from obstructive uropathy with ureteric calculus and renal calculi and for this he was admitted in Pushpawati Singhania Hospital and Research Institute on 7th April, 2018 and discharged on 13th April, 2018. The problem re-occurred and the petitioner had to be re-admitted on 8th May, 2018 and was discharged on 10th May, 2018. Since the petitioner was hospitalized on 8th May, 2018, he could not appear before the learned Trial Court. Learned counsel for the petitioner states that the next date before the learned Trial Court is 23rd May, 2018 and the petitioner will be present before the learned Trial Court.

4. This Court has perused the medical documents including the discharge summary placed on record. Considering that on the date fixed i.e. on 8th May, 2018, the petitioner was admitted in hospital and was discharged only on 10th May, 2018 i.e. a day prior to 11th May, 2018 after having undergone a surgery, this Court finds that the absence of the petitioner before the learned Trial Court on 8th May, 2018 and 11th May, 2018 was not wilful. In view of the undertaking by learned counsel for the petitioner on instructions from the petitioner, non-bailable warrants issued against the petitioner and notice to the surety issued under Section 446 Cr.P.C. by the learned Trial Court on 8th May, 2018 followed by the order dated 11th May, 2018 are set aside.

5. Petition is disposed of.

6. Copy of this order be given dasti to learned counsel for the petitioner under signatures of the Court Master.

MUKTA GUPTA, J.

MAY 22, 2018
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