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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 4th October, 2018

+ CRL. M.C. 5061/2018 and Crl.M.A.33487-33490/2018

MUKHTAR ALI

..... Petitioner

Through: Mr. Ashu Singh, Advocate

Versus

STATE (GOVT. OF NCT OF DELHI)

.... Respondent

Through: Mr. Ravi Nayak, APP for the
State with SI Mintu Singh, PS
Geeta Colony.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petition at hand has been brought under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to assail the order dated 24.07.2018 passed by the District & Sessions Judge (East District) on the file of Sessions Case No.1590/2016, titled *State vs. Govind Chauhan @ Govinda Etc.*, the petitioner concededly being one of the accused persons facing the said prosecution, it having arisen out of First Information Report (FIR) No.455/2014 of Police Station Geeta Colony, involving offences punishable under Section 308/34 of Indian Penal Code, 1860 (IPC).

2. The petitioner admittedly, has not been appearing before the trial court for last several dates of hearing. This having led to duress process including non-bailable warrant (NBW) having been issued against him with notice under Section 446 Cr.P.C. against his surety. It appears that the surety also failed to assist in securing his presence in spite of notice under Section 446 Cr.P.C. and consequently penalty was imposed, the recovery proceedings being underway. By the impugned order dated 24.07.2018, proclamation under Section 82 Cr.P.C. has been issued against the petitioner, his application for cancellation of NBW having been declined.

3. It is noted that the petitioner had earlier approached this court by Crl.M.C. 2305/2018 against the issuance of non-bailable warrants (NBW). He, however, chose to withdraw the said petition which was dismissed accordingly by order dated 18.07.2018, he having given the liberty to approach the trial court. It was inherent in the said liberty that, while approaching the trial court, the petitioner would present himself and participate in the proceedings. It is clear that he failed to do so in spite of having taken such liberty and has consistently avoided appearance, which, in the given facts and circumstances, has left the trial court with no option but to issue process to compel his appearance.

4. It is noted from the record that the ground on which the application for cancellation of NBW was moved primarily was that the petitioner was “*out of town*”. The NBW issued by the trial court had earlier returned with report that his father, who was met at the given

address had stated that he (the petitioner) was not residing at the given address, he having not come to the house for the last one to one and a half years. The petitioner would not disclose his new address to the trial court. In the petition at hand he would claim that he has not been keeping good health and consequently, had been moving applications for exemption from personal appearance. Such applications, the record further shows, were considered by the trial court by earlier orders whereby the same were declined.

5. It is clear that the petitioner has been trying to invent one reason or the other to evade the proceedings before the trial court. In these circumstances, the view taken by the trial Judge to issue proclamation under Section 82 Cr.P.C. cannot be faulted.

6. The petition and the applications filed therewith are dismissed *in limine*.

R.K.GAUBA, J.

OCTOBER 04, 2018

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