

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.3316 of 2019 &
Crl.M.P.Nos.2159 and 2160 of 2019

Rabindra Kumar Bhalotia
Proprietor of
M/s.Ridhi Siddhi Udyog,
Kolkata - 700 027

.. Petitioner / Petitioner /
2nd Accused

Vs.

State by The Inspector of Police
CBI, ACB, Chennai.

.. Respondent / Respondent /
Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 01.02.2019 passed in Crl.M.P.No.509 of 2019 in C.C.No.17 of 2015, on the file of the learned Principal Special Judge for CBI Cases, Chennai and consequently recall the Non-Bailable Warrant issued against the petitioner/2nd accused on 30.01.2019 in C.C.No.17 of 2015.

For Petitioner : Mr.Vishnu Mohan

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

ORDER

The Criminal Original Petition has been filed seeking to set aside the order dated 01.02.2019 passed in Crl.M.P.No.509 of 2019 in C.C.No.17 of 2015, on the file of the learned Principal Special Judge for CBI Cases, Chennai, dismissing the petition to recall the warrant on the ground of non-appearance of the petitioner.

2.The learned counsel for the petitioner would submit that the petitioner is a Senior Citizen, aged about 67 years. He is facing trial for the offences punishable under Sections 120B IPC r/w Sections 7,12, 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. He would submit that the petitioner is a normal resident of Kolkata and he is a business man and that he was appearing before the trial Court and in his absence was duly

represented by a counsel on all hearing dates. He would further submit that the petitioner, due to his old age suffered cerebral stroke and was hospitalised and discharged and due to the cerebral stroke he is bedridden and advised not to travel and thereby he was unable to appear before the trial Court on 30.01.2019. He would also submit that since the ailment was cerebral stroke he was also not able to contact his counsel and that due to lack of communication, petition under Section 317 Cr.P.C., was not filed in time and the trial Judge issued Non-Bailable Warrant of arrest against the petitioner and posted the matter on 13.02.2019. Immediately on being informed about the Non-Bailable Warrant, through his counsel the petitioner had instructed his counsel to file a petition under Section 70(2) Cr.P.C., to recall the warrant. Subsequently, petition under Section 70(2) Cr.P.C., was filed along with the Medical Certificate. The learned trial Judge, by a cryptic order dated 01.02.2019, stating that the petitioner/accused had not appeared and in the absence of the petitioner/accused, NBW of arrest cannot be cancelled had dismissed the petition.

3.The learned counsel for the petitioner would submit that this Court in cases of similar nature had categorically held that the trial Court cannot insist for the presence of the petitioner for recalling a warrant. He would rely on the Judgment of this Court in the case of S.Sundar Vs. The Inspector of Police reported in 2016 SCC Online Mad 1457, wherein this Court has held that the trial Court can entertain recall petition of the petitioner without insisting upon the presence of the petitioner before the Court. He would also rely on yet another order of this Court in Crl.OP.No.29932 of 2015 dated 28.01.2016, wherein in Para 9, it has been held that while granting anticipatory bail to the petitioner it is not necessary for the petitioner/accused to be present before the trial Court to file an application for surrender or recalling.

4.This Court, during the earlier hearing, taking into consideration the medical certificates filed along with the petition, directed the respondent to verify about the health condition of the petitioner through their counter parts in Kolkata.

5.The learned Special Public Prosecutor for CBI Cases on instructions from their counter part in Kolkata would submit that one Ajayveer, Sub Inspector, CBI/ACB/Kolkata, visited the house of the petitioner/accused and he had also enquired the consultant/ medical professional who had treated the petitioner and issued certificate and he had furnished a report stating that the petitioner is bedridden and that the medical certificates issued by the medical professional are genuine.

6. Taking into consideration that the petitioner being a senior citizen and stated to have suffered cerebral stroke and the petitioner having been represented by his counsel on all hearing dates, except on 30.01.2019, due to lack of proper communication between the petitioner and his counsel, this Court is of the opinion that a direction may be issued to the learned trial Judge to entertain the application for recalling the Non-Bailable Warrant in the absence of the petitioner.

7. In view of the above, a direction is issued to the learned trial Judge to entertain and consider the application to recall the Non-Bailable Warrant in the absence of the petitioner. The petitioner shall file an affidavit that he shall be present for answering the charges, at the time of questioning under Section 313 Cr.P.C., and passing of Judgment. Further in the same affidavit he shall undertake that he will be duly represented by a counsel on all hearing dates and the counsel representing the petitioner will cross examine the prosecution witnesses on the date of their examination in chief and the petitioner shall not dispute the identity of the witnesses. Further the petitioner shall appear before the Court in the event, if his presence is insisted by the learned trial Judge, for the progress of the case and for the purpose of identification. If the petitioner adopts any dilatory tactics, it is open to the learned trial Judge, to insist for the appearance and deal with the petitioner in accordance with the Judgment of the Hon'ble Supreme Court in the case of State of Uttar Pradesh Vs. Shambunath Singh reported in (2001) 4 SCC 667.

8. With these observations the Criminal Original Petition stands allowed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

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To

Sub Assistant Registrar

1. The Principal Special Judge for CBI Cases, Chennai.
2. The The Inspector of Police, CBI, ACB, Chennai.
3. The Public Prosecutor, High Court of Madras.

+1 cc to Mr.R.Parthasarathy, Advocate, S.R.No.19459

CrI.O.P.No.3316 of 2019 &
CrI.M.P.Nos.2159 and 2160 of 2019

SSP(CO)
SSM(09/04/2019).