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

+ **CRL.REV.P. 239/2020 & CRL.M.A. 5889/2020**

NEETI SUDHIR JATIA

..... Petitioner

Through: Mr Anurag Ahluwalia and Mr
Abhigyan Siddhant, Advocates.

versus

STATE

..... Respondent

Through: Mr Ravi Nayak, APP for State with
SI Yashdeep, PS Mehrauli.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **25.08.2020**

[Hearing held through video conferencing]

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 12.03.2020 passed by the learned ACMM (South) in Criminal Case No.2033511/2016 captioned 'State v. Rohtash', whereby the process for declaring the petitioner a proclaimed offender under Section 82 of the Cr.PC was initiated.
2. The said complaint arises out of the FIR No. 501/2007 under Section 447 of the IPC registered with PS Mehrauli.
3. The petitioner also impugns an order dated 17.12.2019 passed by the learned ACMM (South), directing that non-bailable warrants (NBWs) be issued against the petitioner.
4. A status report has been filed, which indicates that the FIR in question

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(FIR No.501/2007 under Section 447 of the IPC) was registered with PS Mehrauli at the instance of Block Development Officer (South) from the office of the Deputy Commissioner (South), M.B. Road, Saket. It was alleged that the accused Rohtash and Vikram had committed the offence punishable under the aforementioned provision. The petitioner was not named in the FIR. Thereafter, investigations were carried out and a charge-sheet under Sections 447/420/467/468/120B of the IPC was filed against Rohtash. The other accused, namely, Vikram was also charge-sheeted under Sections 447/420/467/471/120B of the IPC.

5. It is stated that, thereafter, a supplementary charge-sheet was also filed on 04.07.2018 and the petitioner was also charge-sheeted under Section 447 of the IPC. It is alleged that she has encroached upon *gram sabha* land as per the survey conducted by the *Halka Patwari*. It is also stated that the said encroachment has since been removed. Thereafter, summons was issued to the petitioner on 16.08.2018, returnable on 25.09.2018. The same was returned un-served. Subsequently, bailable warrants in the sum of ₹5,000/- were issued, returnable on 30.05.2019. The summons also remained un-served. Since, the bailable warrants could not be served, NBWs were issued against the petitioner on 07.09.2019, returnable on 10.10.2019. But the NBW was also remained un-served.

6. The matter was taken up by the concerned ACMM on 17.12.2019. The order passed on the said date indicates that the NBWs issued against the petitioner were received back with the report: “that the address is not given in the challan.” Considering the same, learned ACMM issued fresh NBWs against the petitioner as well as a notice to the surety returnable on

12.03.2020. The said order is, *ex facie*, erroneous as it is apparent from the record that summons, notices and bailable warrants could not be served on the petitioner on account of being forwarded at an incorrect address. It also appears that the learned ACMM had proceeded on the basis that the petitioner had been released on bail and therefore, had directed that notice be issued to the surety. However, the petitioner had neither sought nor was granted any bail. This is because the petitioner was not named in the FIR; she was named for the first time in the supplementary charge-sheet.

7. The said order directing issuance of NBWs is unsustainable and is, accordingly, set aside.

8. The learned ACMM took up the case on 12.03.2020 and on that date directed a proclamation under Section 82 of the Cr.PC be issued against the accused (petitioner herein), returnable on 30.04.2020.

9. The petitioner is a resident of Mumbai and copy of her passport, which has been placed on record indicates that she has been residing at that address at least since 05.09.2013 – the date on which the passport was issued.

10. In view of the above, the impugned order dated 12.03.2020 is also unsustainable as no summons or notices have been issued to the petitioner at her given address. The impugned order dated 12.03.2020 is, accordingly, set aside.

11. This Court is informed that the matter is now listed before the learned Trial Court on 16.09.2020. Mr Ahluwalia, learned counsel appearing for the petitioner states that considering that the petitioner is a resident of Mumbai and that her daughter has recently recovered from COVID-19, it would not

be feasible for the petitioner to travel to Delhi at least for the next two months.

12. The petitioner shall appear before the Trial Court on the date fixed through an authorized counsel and may request that an appropriate date be fixed for her appearance before the court after a period of two months. Needless to state that if such a request is made, the same shall be considered sympathetically.

13. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AUGUST 25, 2020
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