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

Date of Decision: 13th August, 2020

+ **W.P.(CRL) 1227/2020 & CRL.M.A. 10857/2020**

NUHU SHEIKH @ NOOR SHEIKH Petitioner
Through: Mr. Rahul Tyagi, Advocate. (M:
9899183282)
versus

STATE (GNCT OF DELHI) Respondent
Through: Mr. Sanjay Lao, ASC with SI
Surender, Special Cell.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. The present petition has been preferred under some unusual circumstances owing to the lockdown due to which international flights etc., are not operating and the counsel who is in Australia is unable to travel back to India. Trial in FIR No. 05/2014 titled *State v. Tamanna* is going on before the Id. Additional Sessions Judge, (Central), Tis Hazari Courts. Bail application was moved on behalf of one of the accused - Mr. Kurban, being Bail Application No.1385/2020, who is still in custody. In the said bail application, this Court had passed the following order on 13th July, 2020:

“1. This hearing has been done by video conferencing.

2. Pursuant to the last order, the nominal roll has been received from the jail. The status report is stated to have been filed, however it is not on record. Let the same be placed on record.

3. Mr. Suraj Sharma, Id. Counsel for the

Petitioner submits that the main co-accused, Tamanna has already been granted bail. Let the said order be placed on record. In the meantime, since there is only one witness whose evidence is to be recorded by the Trial Court and it has been pending since one year, it is directed that the concerned Trial Court shall record the evidence of the outstanding witness which is pending, before the next date of hearing. If required, evidence can be recorded via video conferencing.

4. Let the evidence be recorded and a status report of the trial be also placed on record by the prosecution.

5. List on 4th September, 2020. Let a copy of this order be sent to ASJ (Central), Tis Hazari Courts, Delhi, where the trial is going on.”

3. In compliance of the above order, the Id. ASJ has commenced the cross-examination of the last two witnesses. The Id. Sessions Judge had noted on 4th August, 2020 that there are two witnesses i.e., PW-19 and one FSL expert, who remain to be examined. The said two witnesses have been examined and cross-examined by the accused - Mr. Kurban and Ms. Tamanna. However, PW-19 is yet to be cross-examined on behalf of the third co-accused - Nuhu Sheikh @ Noor Sheikh.

4. The Id. ASJ was of the opinion that PW-19 is a crucial witness to whom various records would have to be put during cross-examination. Mr. Rahul Tyagi, Id. counsel for Nuhu Sheikh @ Noor Sheikh, expressed his difficulty in travelling from Australia owing to the lockdown and the lack of international flights. The Id. ASJ has listed the matter on 17th August, 2020. Accordingly, the present petition has been preferred on behalf of Mr. Nuhu Sheikh @ Noor Sheikh.

5. Mr. Tyagi, Id. counsel submits that though he is willing to conduct the

cross-examination through video conferencing. However the same would be slightly difficult in view of the records, etc., not being available with him. Further, he submits that the Id. ASJ was also of the opinion that it is advisable to conduct the cross-examination physically instead of through video conferencing owing to the nature of the matter and the significance of the deposition of PW-19. Accordingly, it is prayed that the Petitioner be permitted to record the cross-examination only after resumption of physical functioning of the Court. It is also submitted that two of the co-accused have already been released on bail.

6. Mr. Sanjay Lao, Id. ASC appearing for the prosecution submits that since the cross-examination on behalf of Mr. Kurban, whose bail application is pending, has already been concluded, he has no objection if the remaining cross-examination is done once physical court starts functioning.

7. In view of the above facts and circumstances, the present writ petition is disposed of with the following directions:

- i. Insofar as the cross-examination of PW-19 on behalf of Mr. Nuhu Sheikh @ Noor Sheikh is concerned, the same is permitted to be conducted after resumption of physical courts, once the counsel is able to travel back to India;
- ii. Insofar as the bail application of Mr. Kurban is concerned, the same shall be considered on its own merits.

8. The present writ petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

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