

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

+ **CRL.REV.P. 314/2021**

Date of Decision: 22.11.2021

**IN THE MATTER OF:**

POONAM DEVI & ORS. .... Petitioners  
Through: Ms. Sangeeta Singh, Advocate

Versus

STATE OF NCT OF DELHI ..... Respondent  
Through: Ms. Neelam Sharma, APP for State  
with ASI Bala Saheb

**CORAM:**  
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**MANOJ KUMAR OHRI, J. (ORAL)**

1. The present petition has been filed under Section 397 read with Section 401 Cr.P.C. on behalf of the petitioners assailing the order dated 05.01.2021 passed by the learned Duty MM, Patiala House Courts, New Delhi in FIR No. 58/2018 registered under Section 420 IPC at Police Station South Avenue, New Delhi, whereby the petitioners were declared absconders at their address in Jharkhand.
2. Learned counsel for the petitioners submits that the petitioners are residents of Jharkhand and work at construction sites as daily wagers. She contends that the petitioners belong to poor strata and have been falsely implicated in the present case. It is submitted that petitioner No. 1/Poonam Devi, except for knowing how to write her name, is completely illiterate. It is further submitted that the petitioners' bank accounts have been misused by one Trilochan Ravi Das, who took their

pass books and ATM cards on the pretext of getting loan sanctioned in their names. It is stated that on coming to know of the proceedings before the Trial Court, replies dated 24.10.2020 were sent on behalf of the petitioners to the SHO, Police Station South Avenue, New Delhi and copies of the same have been placed on record. It is also contended that at the relevant time, rail services were suspended across the country due to the ongoing pandemic and as a result of the same, the petitioners could not appear before the Investigating Officer.

3. Learned counsel further submitted that non-appearance of the petitioners before the Trial Court was neither intentional nor wilful or deliberate, but due to the aforesaid bona fide reason. She also submitted that the petitioners have remorse for their conduct and undertake to appear before the Trial Court as and when the matter is fixed. In this regard, it is also stated that the petitioners are willing to file written undertakings before the Trial Court in the form of affidavits, if so directed.

4. Learned APP for the State, on the other hand, has opposed the prayer made in the petition. She submits that when the present petitioners failed to join the investigation, NBWs were issued against them on 17.09.2020, whereafter, process under Section 82 Cr.P.C. was issued on 21.10.2020. When the petitioners failed to appear despite issuance of NBWs, they were declared absconders by the concerned Court vide the impugned order dated 05.01.2021.

5. I have heard learned counsels for the parties and gone through the material placed on the record.

6. The petitioners are stated to be daily wagers belonging to poor strata of the society. Initially, the Investigating Officer had issued notices

under Section 41-A Cr.P.C. on 20.04.2020, and then on 14.06.2020 & 27.08.2020. It is noted that at the time of issuance of the first two notices under Section 41-A Cr.P.C., the state of Jharkhand was either under lockdown or under lockdown-like restrictions and it was impossible for the petitioners to appear before the Investigating Officer. Later, the petitioners had also sent replies on 24.10.2020, which averment is not denied. In the said replies, the petitioners had explained as to how they were cheated by the aforementioned Trilochan Ravi Das and that they were willing to cooperate in the investigation.

7. A Status Report has also been placed on record, wherein it is stated that after analysis of the bank account statements of the complainant and the petitioners, it has been found that the cheated amounts had not only come to the petitioners' accounts, but were also used in online purchasing and transferred to other accounts for which investigation is still pending.

8. Although the petitioners have shown remorse for their conduct and have undertaken to appear before the Trial Court to face the trial, this Court cannot lose sight of the fact that they had remained absent for a considerable period resulting in consequential delay in the proceedings. Be that as it may, this Court is also cognizant of the position that the purpose of proceedings under Section 82 Cr.P.C. is to secure the presence of the accused before the Court.

9. Keeping in view the purpose of proceedings under Section 82 Cr.P.C. and the explanation offered on behalf of the petitioners as well as the statement given on their behalf, this Court deems it fit to set aside the impugned order, subject to the condition that the petitioners shall file

written undertakings in the form of affidavits stating that they shall regularly appear before the Trial Court.

10. The undertakings shall be filed before the Trial Court within a period of two weeks from today.

11. With the above directions, the petition is disposed of.

12. A copy of this order be communicated electronically to the concerned Trial Court for information.

**(MANOJ KUMAR OHRI)**  
**JUDGE**

**NOVEMBER 22, 2021**

*p'ma*

नित्यमेव जयते