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

Date of Decision: 16.05.2023

+ CRL.A. 165/2009 & CRL.M.A 13208/2023

RAMESH WADHERA Appellant

Through: Mr. Amar Sareen, Mr. Nishant
Pathak & Mr. R.P. Jinsh, Advs.

versus

STATE Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI
Sukhbir Singh, P.S. Mandir
Marg, New Delhi.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

CRL.M.A. 13208/2023 (for cancellation of NBW)

1. By way of present application filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') by the applicant/appellant seeks cancellation of Non Bailable Warrant ('NBW') issued by this Hon'ble court *vide* order dated 14.02.2023 in case FIR bearing no. 342/2000, registered at Police Station Mandir Marg, New Delhi, for the offences punishable under Section 325 of

the Indian Penal Code, 1860 ('IPC') and Section 27/54/59 of the Arms Act 1959.

2. In view of the reasons stated in the application, the NBWs issued against the appellants stand cancelled.

CRL.A. 165/2009

3. The present appeal under Section 374 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed by the appellant against the judgment dated 23.01.2009 and order on sentence dated 29.01.2009 passed by learned Additional Sessions Judge (FTC), New Delhi for offences punishable under Sections 325/307 of the the Indian Penal Code, 1860 ('IPC') and Section 27/54/59 of the Arms Act 1959.

4. The present appeal was admitted and sentence of appellant was suspended vide order dated 24.02.2009 by this Court.

5. Briefly stated, case of the prosecution is that on 25.09.2004, police officials had received a wireless message about firing by some miscreants at Palika Place, New Delhi. Upon reaching the alleged spot, complainant/injured had disclosed that he had been working as a driver for a company for last two years and on 25.09.2004 at about 8:30 pm, he was standing near his parked vehicle at Palika Place when the owner of a nearby shop i.e., the present appellant came along with his 3-4 colleagues and had objected to the vehicle parked by him and they had started beating the complainant. Thereafter, appellants employer and Manager came to the spot and rescued him from clutches of the accused persons. It is alleged that accused/applicant had fired 3-4 rounds from his pistol from which the complainant and his associates escaped. Furthermore, accused/applicant and other co-

accused persons absconded from the spot in a car. Therefore, present FIR was registered.

6. The learned Trial Court, *vide* judgment dated 23.01.2009 convicted the appellant only under Section 325 of IPC and sentenced him to undergo rigorous imprisonment for one year and fine of Rs.5,000/-, and in default of payment of fine, to undergo rigorous imprisonment for three months.

7. At the outset, learned counsel for appellant, upon instructions, submits that the appellant does not propose to assail the impugned judgment on merits and would like to confine the submissions this appeal, to the point of sentence alone. It is stated that since the incident is the present case in 19 years old, the sentence of the appellants be reduced to the period already undergone by him, and no purpose would be served by sending the appellant to the jail at this point of time.

8. Learned APP for State has argued to the contrary.

9. This Court has heard the parties and perused the material on record.

10. As per the nominal roll, the appellant had remained in judicial custody for 3 months 4 days. The incident in present case pertains to the year 2004, and the appellant has faced the trial for almost 19 years. The investigation officer states that the appellant is not involved in any other criminal case. It is also stated that after he was convicted and sentenced in the present case, he has contributed positively to the society. The conduct of the appellant during the period of judicial custody has been reported to be satisfactory, as per nominal roll.

11. It is also not the case that the appellant had misused the liberty of bail granted to him either during the period of trial or during the pendency of the present appeal.

12. Considering the overall facts and circumstances of the case, this Court is of the opinion that no useful purpose will be served by requiring the appellant to undergo the remaining portion of sentence at this belated stage, when the appellant has faced trial for almost 19 years, and is today, earning for himself looking after his family.

13. Thus, in view of the aforementioned circumstances, this Court, though not interfering with the conviction of the appellant, reduces the sentence of imprisonment to the period already undergone by the appellant.

14. Accordingly, the present appeal stands disposed of in above terms.

15. Bail bond stands cancelled and the surety stands discharged.

16. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 16, 2023/kss