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

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***Reserved on: 13.09.2023******Pronounced on: 31.10.2023***+ **CRL.REV.P. 943/2023 & CRL.M.A. 24401/2023****INSPECTOR PAWAN KUMAR**

..... Petitioner

Through: Mr. Abhishek Grover and Mr.  
Siddarth Pandit, Advocates.

versus

**STATE THROUGH SHO PS NIHAL VIHAR** ..... RespondentThrough: Mr. Manoj Pant, APP for the  
State, with SI Sanjeet, PS  
Nihal Vihar.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present revision petition under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the petitioner seeking setting aside of order dated 06.06.2023 passed by learned Additional Sessions Judge-09, West District, Tis Hazari Courts, Delhi ('Trial Court') whereby the learned Trial Court was pleased to issue bailable warrants in sum of Rs. 10,000/- and penalty of Rs. 5,000/- was also imposed on the petitioner alongwith issuance of warrants of attachment through DCP concerned.

2. It is the case of petitioner, who is an inspector in Delhi Police, that he was the investigating officer in case FIR No. 395/2017,



registered at Police Station Nihar Vihar, under Sections 302/201/34 of Indian Penal Code, 1860. It is stated that on 09.01.2023, he was partly examined-in-chief as PW-19 in the said case and the matter was listed for recording of further evidence on 21.02.2023. However, on 21.02.2023, the petitioner could not appear before the learned Trial Court for the purpose of recording his testimony since no summons had been issued to him, but he was only bound down by the learned Trial Court, however, due to his non-appearance, the learned Trial Court had issuedailable warrants against him. The petitioner states that on the date fixed before the Trial Court i.e. 03.05.2023, the petitioner had appeared before the learned Trial Court and had prayed that theailable warrants issued against him be cancelled. Thus, on the request of petitioner, theailable warrants were cancelled by the learned Trial Court, however, evidence could not be recorded on the said date and the matter was listed for recording of petitioner's evidence on 06.06.2023. The petitioner herein states that he was on earned leave from 19.05.2023 and 18.06.2023 and the same was intimated to the Head Office of Delhi Police Department. Therefore, on 06.06.2023 i.e. the date fixed before the Trial Court, the petitioner being on earned leave, could not appear before the Court for the purpose of recording his testimony, and therefore, the learned Trial Court was pleased to pass the following order:

“...Personal bond of Rs. 5,000/- stands forfeited to the State and penalty equivalent to the forfeited amount is imposed. Warrant of attachment be issued for the same through DCP concerned. Let fresh B/Ws in the sum of



Rs.10,000/- be issued against PW-19 Inspector Pawan Sharma through DCP concerned...”

3. Aggrieved by the aforesaid order dated 06.06.2023, the petitioner has filed the present petition.

4. Learned counsel for the petitioner argues that the impugned order has been passed in an arbitrary manner and the learned Trial Court has completely overlooked the fact that petitioner had intentionally or deliberately not appeared before the Court. It is stated that only the higher authorities of Delhi Police are empowered to impose any punishment on its officers, minor or major, after initiating proper inquiry as per service Rules and Regulation. It is argued that the learned Trial Court has failed to consider that petitioner was on earned leave from 19.05.2023 to 18.06.2023 and the same was duly intimated to the Naib Court from the prosecution branch, however, the learned Trial Court had overlooked the same while passing the impugned order. It is also stated that summons or notice were never issued to petitioner, but he was only bound down to appear on the next date of hearing and it is beyond the powers of any human being to remember the next date of hearing before the Trial Court on which he has to get his testimony recorded. It is also stated that the learned Trial Court has failed to consider that the harm caused by this order to the service of the revisionist is irreparable. Therefore, it is prayed that impugned order be set aside.

5. This Court has heard arguments addressed by the learned counsel for petitioner and has considered the material placed on record.



6. In the present case, a perusal of records reveal that the petitioner herein was partly examined as PW-19 on 09.01.2023 and his further examination-in-chief was deferred to 21.02.2023 and the petitioner was bound down for the next date of hearing. The relevant portion of order dated 09.01.2023 reads as under:

“...PW-19 further partly examined in chief. His further examination in chief is deferred as it is already 03.30 PM. He is bound down for the NDOH.

Re-notify the matter for recording of prosecution evidence on 21.02.2023...”

7. Thereafter, on 21.02.2023, the petitioner had failed to appear before the learned Trial Court despite being bound down and thus, bailable warrants were issued against him by the learned Trial Court *vide* the following order:

“...Today, the matter is notified for recording of prosecution evidence. However, no prosecution witness is present today.

PW-19 Inspector Pawan Sharma absent despite being bound down for today. Let B/Ws in the sum of Rs. 5,000/- be issued against him through DCP concerned.

Re-notify the matter for recording of prosecution evidence on 03.05.2023..”

8. On 03.05.2023, the bailable warrants issued by the learned Trial Court were cancelled on a prayer in this regard being made by the petitioner and he was further bound down to appear for recording of evidence on the next date of hearing i.e. 06.06.2023. For reference, the order dated 03.05.2023 is extracted hereunder:

“...PW-19 Inspector Pawan Shanna prays for cancellation of his B/Ws.

Heard. Considering the submissions, the B/Ws issued



against him stands cancelled. He is warned to be careful in future. He is bound down for the NDOH.

Re-notify the matter for recording of prosecution evidence on 06.06.2023...”

9. However, again on 06.06.2023, the petitioner had not appeared for recording of his testimony and thus, the learned Trial Court had passed the following order, which has been impugned before this Court:

“...PW-19 Inspector Pawan Sharma is not responding despite being bound down for today. Even on the last date of hearing, his B/Ws were cancelled. This shows that he is deliberately not appearing in the Court. **Personal bond of Rs. 5,000/- stands forfeited to the State and penalty equivalent to the forfeited amount is imposed. Warrant of attachment be issued for the same through DCP concerned. Let fresh B/Ws in the sum of Rs.10,000/- be issued against PW-19 Inspector Pawan Sharma through DCP concerned.**

Re-notify the matter for recording of prosecution evidence on 24.08.2023...”

(Emphasis supplied)

10. In the present case, this Court notes that despite being bound down to appear before the learned Trial Court for the purpose of recording of testimony, the petitioner had failed to appear on the date fixed on two occasions. On one occasion i.e. 21.02.2023, the learned Trial Court had issuedailable warrants in the sum of Rs.5000/- against the petitioner which were then cancelled on the next date of hearing upon request made by the petitioner. However, again on the next date of hearing i.e. 06.06.2023, the petitioner did not appear despite being bound down, despite the fact that earlier also,ailable warrants had been issued against him for such conduct.



11. At this juncture, it is also significant to note and consider that as per practice in the Trial Courts, a witness is often 'bound down' by informing him in the Court itself by the concerned Trial Judge that he is required to appear on the next date of hearing and he should note down the next date of hearing. It is a practice followed by the Trial Courts since long that witnesses are bound down for next dates of hearing, which are short dates, and at times, witnesses do pray to the Court that they be given *dasti* summons so that they can show it to their superior authorities to ensure that there is no hindrance in their appearance. Thus, 'bound down' means that the person concerned has undertaken to appear before the Court on the next date, being bound down for the same.

12. Therefore, as a disciplined force, to say that it is not possible to remember a date so fixed by the Court despite being bound down, not just once but on several occasions, is meritless contention raised before the Court.

13. Once the learned Trial Court on 03.05.2023 had cancelled the bailable warrants issued against the petitioner and he was bound down for the next date of hearing i.e. 06.06.2023, it was a kind of an undertaking given by the petitioner before the Court for his appearance on the next date of hearing.

14. The contention raised on behalf of the petitioner for his non-appearance on 06.06.2023 is that the petitioner was on earned leave from 19.05.2023 to 18.06.2023. However, even in case the petitioner was on leave, he should have informed the learned Trial Court that he will not be available on the date on which he was bound down to



appear. Further, if due to an urgent situation, he was not able to appear before the learned Trial Court, he should have still informed the Court, in this era of technology, by sending an E-Mail or message to the Reader of the concerned Court or to the public prosecutor or to the concerned SHO or to the Naib Court, informing about his inability to appear on the said date. In this regard, learned counsel for petitioner had stated during the course of his arguments that petitioner had informed the Naib Court about him being on leave. However, this Court had repeatedly asked the learned counsel for petitioner to produce before it, any intimation given to the Naib Court about the same and whether the Naib Court was aware about the same but had failed to inform the learned Trial Court. Though some time was sought to find out the relevant details regarding intimation given to the Naib Court or any other court staff, nothing could be placed on record to show that the petitioner had informed the learned Trial Court or Naib Court any other person about his absence or him being on earned leave due to which he was not able to appear before the learned Trial Court on 06.06.2023.

15. Moreover, as already noted in preceding paragraphs, the past conduct of petitioner also shows that on 21.02.2023, he had remained absent despite being bound down and his bailable warrants were cancelled on his request on the next date and a warning was issued by the learned Trial Court, which shows that the petitioner was not appearing before the Court on previous occasions also.

16. In these circumstances, this Court does not find any fault with the observations made by the learned Trial Court about the conduct



of the petitioner.

17. However, this Court is also conscious of the fact the order passed by the learned Trial Court imposing a fine of Rs.5000/- on the petitioner alongwith directions for issuing warrant of attachment for the said purpose may have a significant impact on the career and future service of the petitioner in the Delhi Police. Thus, keeping in consideration only this factor, this Court is inclined to take a lenient view, by modifying the order dated 06.06.2023 only to the extent that directions for imposition of fine of Rs.5,000/- and issuance of warrants of attachment through DCP concerned be set aside, while not interfering with other directions issued in order dated 06.06.2023 such as issuance of fresh bailable warrants, for which the petitioner may raise appropriate prayer before the learned Trial Court.

18. However, also considering the conduct of the petitioner before the learned Trial Court, it is directed that the petitioner shall tender an unconditional apology in writing before the learned Trial Court on the next date of hearing and shall be physically present before the learned Trial Court for the said purpose.

19. With these directions, the present petition stands disposed of, alongwith pending application.

20. A copy of this judgment be forwarded to the learned Trial Court for information

21. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**OCTOBER 31, 2023/ns**