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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 2212/2024

SUNIL JOSHAN

..... Petitioner

Through: Mr. Jatin Julka, Mr. Raj
Shekhar & Mr. Mrutunjay
Mishra, Advocates

Versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Utkarsh, APP for the
State with Insp. Vijay
Singh, DIU/Dwarka.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

18.03.2024

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CRL.M.A. 8565/2024 (*exemption from filing legible documents / annexures / margins / certified copies along with affidavit in support*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 2212/2024 & CRL.M.A. 8564/2024 (*interim stay*)

3. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), *inter alia*, praying for quashing of the orders dated 22.06.2019, 20.07.2019 and 18.12.2019, passed by the learned Metropolitan Magistrate ('MM'), Dwarka Court, Delhi (hereinafter '**the impugned orders**'). The petitioner also seeks quashing of the chargesheet in Cr. Case No. 2102/2023.
4. By the impugned order dated 18.12.2019, the petitioner and other co-accused persons namely Anil Kumar Joshan and Sumer Chand Joshan were declared absconders. It is pointed out that the co-accused namely, Anil Kumar Joshan had challenged
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the impugned orders by filing criminal revision petition being Criminal Revision No. 382/2023, which was dismissed by the learned Additional Sessions Judge ('ASJ'), Dwarka Courts, Delhi by order dated 05.09.2023.

5. The co-accused namely, Anil Kumar Joshan thereafter filed a petition under Section 482 of the CrPC challenging the order dated 05.09.2023 passed by the learned ASJ and order dated 18.12.2019 passed by the learned MM.

6. A coordinate Bench of this Court by order dated 07.03.2024 in CRL.M.C. 6576/2023, noted that even though NBWs were taken by the State, the accused had already approached the High Court challenging the dismissal of his anticipatory bail application. It was also noted that the accused had not been charge-sheeted for the offence under Section 420 of the Indian Penal Code, 1860 ('IPC') but only under Section 174A of the IPC.

7. The allegations primarily are levelled against the petitioner's father who is stated to be the main accused and has already been released on regular bail. A Coordinate Bench, considering the facts had set aside the order dated 18.12.2019, pursuant to the proceedings under Section 92 of the CrPC that were initiated against the petitioner therein. The chargesheet filed under Section 174A IPC was also quashed subject to payment of cost of ₹25,000/- by the petitioner.

8. On being asked if the petitioner is similarly placed as the petitioner in Crl. M.C. 6576/2023, the learned Additional Public Prosecutor for the State submits that the role alleged against the petitioner and the facts and circumstances of the case are similar.

9. The learned APP, however, submits that the orders impugned ought to be challenged by filing appropriate petition



under Section 397 of the Cr.P.C before the court of learned Sessions Judge. He submits that the petitioner has efficacious and alternative remedy.

10. It is not a doubt that the order dated 18.12.2019 is a revisable order, any challenge to such an order under Section 397 CrPC would be maintainable before the court of learned Sessions Judge. The petitioner, thus, has an alternative efficacious remedy.

11. However, considering the fact that a Coordinate Bench of this Court has already set aside the impugned order, in relation to the co-accused, no useful purpose would be served by relegating the petitioner to file a petition before the Court of Sessions Judge. It is not denied that the role assigned to the petitioner herein and the petitioner in CrI.M.C. 6576/2023, and the facts of both the cases are similar.

12. Considering the aforesaid, the impugned order dated 18.12.2019 is set aside. The chargesheet filed under Section 174 IPC is also quashed, subject to payment of cost of ₹50,000/-, out of which, ₹25,000/- to be paid to the Police Welfare Fund and ₹25,000/- to be paid to New Delhi Bar Association Welfare fund.

13. Proof of payment of cost be submitted with the concerned SHO within four weeks.

14. The learned counsel for the petitioner, on instructions, submits that the petitioner would cooperate with investigation as and when required by the State.

15. In view of the above, the present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

MARCH 18, 2024

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