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

+ **CRL.M.C. 2938/2024**

JAMAL RANJHA

..... Petitioner

Through: Mr. Akshay Bhandari, Mr. Anmol Sachdeva, Ms. Megha Saroa & Mr. Dinesh Kumar Sharma, Advocates.

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Yudhvir Singh Chauhan, APP with Inspector Kuldeep Singh, PS: Seelampur, for State.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **16.04.2024**

CRL.M.A. 11252/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 2938/2024

3. This petition has been preferred on behalf of the Petitioner under Article 227 of the Constitution of India read with Section 482 Cr.P.C. challenging the order dated 12.03.2024 in FIR No.351/2013 registered at PS: Seelampur, under Sections 3(2) and 3(5) of Maharashtra Control of Organised Crime Act, 1999 ('MCOCA') as well as for a direction to the Trial Court to permit the Petitioner to cross-examine PW-70 on the next date of hearing, i.e. 16.04.2024.
4. Factual matrix to the extent necessary is that Petitioner is facing trial in the aforementioned FIR and is in judicial custody since 20.06.2016. As



per the narrative in the petition, on 07.02.2024 Trial Court closed the opportunity of the Petitioner to cross-examine PW-70, Investigating Officer, Anant Mishra. Against the said order, Petitioner filed Crl. M.C. 1329/2024 before this Court, which was allowed vide order dated 29.02.2024, directing the Trial Court to fix a date and time for cross-examination of PW-70 by the Petitioner, restricting the questions to the requirements of Sections 2(d) and 2(e) of MCOCA and the relevancy of the material on record. It was made clear that no further opportunity shall be granted to the Petitioner to cross-examine the said witness. On 12.03.2024, learned Trial Court recalled PW-70 but counsel for the Petitioner did not appear and by the impugned order dated 12.03.2024, Trial Court declined to give another opportunity and closed the right to cross-examine on the ground that this Court had granted last opportunity and the directions could not be by-passed by the Trial Court. This order was again assailed by the Petitioner by filing an application being Crl. M.A. 10663/2024 in the earlier decided Crl. M.C. 1329/2024, which was however withdrawn with liberty to file a fresh petition or approach the Trial Court for necessary directions. Pursuant to the liberty, present petition has been filed on behalf of the Petitioner.

5. Learned counsel for the Petitioner submits that this Court had granted opportunity to the Petitioner to cross-examine PW-70 as the Investigating Officer is a material witness and if the opportunity is closed, grave prejudice shall be caused to the defence of the Petitioner. No doubt, this Court had observed that this would be the last opportunity and no further chance will be given to the Petitioner, however, when the matter was fixed by the Trial Court on 12.03.2024, the counsel did not appear on account of a communication gap between the *pairakar* of the Petitioner and the present



counsel. Petitioner is in judicial custody and could not directly communicate with the counsel. Petitioner and his brother namely Kamaluddin are facing the trial together and before the date of hearing before the Trial Court on 12.03.2024, counsel was informed by the *paikar* that a new counsel has been engaged and therefore, the present counsel did not appear on 12.03.2024. Later, however, the misunderstanding was cleared and the present counsel was informed that co-accused Kamaluddin had engaged a new counsel and not the Petitioner. Petitioner should not suffer due to this communication gap with the counsel and due to his non-appearance. It is a settled law that litigant should not suffer for the faults or inadvertent mistakes of a counsel. It is thus prayed that in the interest of justice, one last opportunity be granted to the Petitioner to cross-examine PW-70 with an assurance and undertaking that no further opportunity shall be sought in this regard.

6. Mr. Chauhan, learned APP states that this Court had granted indulgence to the Petitioner in the earlier round of litigation at the same time making it clear that no further opportunity will be granted for cross-examination of PW-70. Despite this condition, Petitioner has been casual in his approach in prosecuting the case. Knowing that the witness was material and closure of the opportunity to cross-examine would impact the defence, Petitioner should have ensured that he was represented by a counsel on the date fixed by the Trial Court. Alleged miscommunication between the *paikar* and his counsel is only an after-thought to seek further indulgence of this Court, which ought not be granted.

7. Heard learned counsel for the Petitioner and learned APP for the State.



8. Indisputably, this Court had granted opportunity to the Petitioner to cross-examine PW-70 vide order dated 29.02.2024 in Crl. M.C. 1329/2024, subject to a caveat that no further opportunity shall be granted. Pursuant to the directions of this Court, learned Trial Court fixed the matter on 12.03.2024 for the purpose of cross-examination of PW-70 as well as for hearing other miscellaneous applications. Admittedly, Petitioner was unrepresented on the said date and since the Trial Court was bound by the directions of this Court to grant no further opportunity, learned Trial Court closed the right of the Petitioner to cross-examine PW-70 and no fault can be found in the impugned order to this extent. There is, however, merit in the contention of the Petitioner's counsel that Petitioner should not suffer for the fault of the counsel or the *paurokar* as he is himself in judicial custody. Present counsel has taken a categorical position in the petition that there was miscommunication between him and the *paurokar*, whereby he inadvertently understood that Petitioner had engaged a new counsel and for this reason, he did not appear on 12.03.2024, whereas new counsel had been engaged by the co-accused Kamaluddin. Learned counsel has taken the onus of the Petitioner being unrepresented on him and has reiterated this position during the course of hearing. Considering that even this Court was of the view in the earlier round of litigation that PW-70 being the IO was a material witness and his cross-examination was essential, in my view, it would be travesty of justice if the opportunity to cross-examine PW-70 is closed, especially in view of the fact that the counsel has admitted that Petitioner cannot be blamed for the lapse.

9. In these peculiar facts and circumstances, the impugned order is set aside to the extent the right of the Petitioner to cross-examine PW-70 has



been closed. Trial Court is requested to fix a date for cross-examination of PW-70, making it clear that no further opportunity shall be given to the Petitioner to cross-examine the said witness under any circumstance, whatsoever. If the Petitioner fails to avail of the opportunity, the Trial Court shall proceed with the trial as per law. It is further made clear that the restrictions imposed on the questions in the cross-examination vide order dated 29.02.2024 shall continue to operate.

10. Petition is allowed, subject to payment of cost of Rs.10,000/- in favour of NDBA Members Welfare Fund (Account No.18580110013847, UCO Bank, Patiala House Courts Branch, New Delhi), within two weeks from today.

11. Petition is disposed of accordingly.

JYOTI SINGH, J

APRIL 16, 2024

B.S. Rohella