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

+ **CRL.M.C. 3709/2024**

NIRAJ & ORS.

..... Petitioners

Through: Mr. Sanjay Srivastav and Mr. Anjney
Mishra, Advocates

versus

STATE OF NCT DELHI & ANR.

..... Respondents

Through: Ms. Shubhi Gupta, APP for State with
Insp. Sangita, DIU/NE.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

08.05.2024

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CRL.M.A. 14220/2024 (exemption)

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

CRL.M.C. 3709/2024 & CRL.M.A. 14219/2024 (stay)

3. This petition has been filed on behalf of the Petitioners under Section 482 Cr.P.C. seeking setting aside of order dated 03.05.2024 passed by learned Additional Sessions Judge (POCSO), Karkardooma Courts, Delhi, in case FIR No.594/2023 under Section 323/354 IPC and Sections 8/10 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'), registered on 19.08.2023 at PS: Jyoti Nagar, whereby non-bailable warrants (NBWs) were issued against the Petitioners. Charge sheet was filed whereby Sections 509/34 IPC, Section 75 Juvenile Justice Act, 2015, and Section 12 of the POCSO Act, were added.

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4. Issue notice.
5. Learned APP accepts notice on behalf of State.
6. This petition has its genesis in an FIR, which came to be registered on the directions of the learned Sessions Judge (POCSO) passed on 11.08.2023 allowing an application under Section 156(3) Cr.P.C. Impugned order reflects that cognizance was taken by the Court on 03.05.2024 and on the same day, NBWs were issued against the Petitioners.
7. Learned counsel appearing on behalf of the Petitioners submits that the impugned order is erroneous and against the judgments of the Supreme Court where while issuing guidelines, it is held that issuance of NBWs involves interference with personal liberty and therefore, Courts have to be extremely careful before issuing NBWs. In *Inder Mohan Goswami and Another v. State of Uttranchal and Others*, (2007) 12 SCC 1, the Supreme Court observed that NBWs should be issued to bring a person to Court when summons or bailable warrants are unlikely to have the desired result as in cases where it is reasonable to believe that person will not voluntarily appear in Court; police authorities are unable to find the person to serve him with a summon or it is considered that the person could harm someone if not placed in custody immediately. It was further observed that as far as possible, if the Court is of the opinion that a summon will suffice in getting the appearance of the accused in the Court, the summons or the Bailable Warrants should be preferred. Learned counsel also relies on the judgments of the Supreme Court in *Aman Preet Singh v. CBI through Director*, 2021 SCC OnLine SC 941, and *Siddharth v. State of U.P. and Anr.* (2022) 1 SCC 676, in this context.



8. Learned counsel, therefore, urges that the Trial Court ought to have issued summons at the first instance and if on receipt of the report of the summons or bailable warrants, Court is of the view that Petitioners were evading service, the extreme order of issuing NBWs could be passed. It is also submitted that in the present case, Petitioners have clean antecedents and permanent residents of Delhi with deep roots in the society and there is no chance of their absconding and in fact, charge sheet was filed without arrest. In these circumstances, it is prayed that the NBWs be kept in abeyance for a period of two weeks to enable the Petitioners to approach the Trial Court and take recourse to remedies available in law. On instructions, learned counsel states that the Petitioners shall appear before the learned Sessions Court on 22.05.2024 and file appropriate applications.

9. Petition is, accordingly, disposed of directing that the NBWs issued against the Petitioners will not be executed till 22.05.2024, within which period Petitioners will be at liberty to take recourse to appropriate remedies before the concerned Sessions Court.

10. Pending application also stands disposed of.

11. It is made clear that this Court has not expressed any opinion on the merits of the case.

JYOTI SINGH, J

MAY 8, 2024/kks

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