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

+ **CRL.M.C. 5871/2023 and CRL.M.A. 22084/2023 (stay)**

RAM MEHER

..... Petitioner

Through: Mr. Bharat Monga, Mr. Arvind Malik
and Mr. Amulya Upadhyay, Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Laksh Khanna, APP for State with
SI Parvinder Kumar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

04.01.2024

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1. By way of present petition filed under Section 482 Cr.P.C., the petitioner, who has been arrayed as an accused in F.I.R. No.142/2021, P.S. Crime Branch, seeks setting aside of the order dated 10.05.2023 passed by learned CMM, South East, Saket Courts, New Delhi as well as the order dated 18.07.2023 passed by learned Principal District and Session Judge, South East, Saket Courts, New Delhi.

2. The grievance of the petitioner is that despite his appearance before the Court and application seeking cancellation of the NBWs issued against him, the Court proceeded against him under Section 82 Cr.P.C. and declared him as a proclaimed offender. Learned counsel for the petitioner submits that on 07.03.2023, the presence of the petitioner/accused is found mentioned in the order sheet for that day and consequent to the liberty



granted, the petitioner preferred a fresh application seeking cancellation of NBWs on 24.04.2023 which was to be taken up on 11.05.2023. Instead of taking note of the said application, the trial Court proceeded on the application filed by the Investigating Officer and erroneously declared him as a proclaimed offender. Learned counsel for the petitioner, on instructions, submits that the petitioner undertakes to submit to the process in accordance with law.

3. Learned APP for the state has opposed the petition.

4. A perusal of the order dated 07.03.2023 would show that not only was the presence of the petitioner noted, but additionally, his statement was recorded whereby he withdrew his application for cancellation of NBWs with liberty to file a fresh application. A fresh application came to be filed on 24.04.2023 which however, statedly was not taken up on that day. The next date of hearing, as per order dated 07.03.2023, was 11.05.2023. Apparently, in between, on an application filed by the I.O., the Trial Court directed publication of proclamation vide order dated 16.03.2023 which came to be published on 31.03.2023. As per Section 82 Cr.P.C., the declaration as proclaimed offender is to be done after grant of a period of not less than 30 days. Notably, the petitioner preferred the application for cancellation of NBWs on 24.04.2023 i.e., within 30 days of publication which was not taken up for consideration on that day. On 10.05.2023, the impugned order came to be passed despite the pendency of petitioner's application. On the next day i.e., 11.05.2023, the Court dismissed the petitioner's application by observing that the same had become infructuous in light of the order passed on 10.05.2023.



5. Considering that the impugned order came to be passed despite the pendency of the application seeking cancellation of NBWs and especially when the petitioner had himself appeared on 07.03.2023, the impugned order is set aside.
6. The present petition is disposed of alongwith the pending application.

MANOJ KUMAR OHRI, J

JANUARY 4, 2024

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