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

+ W.P.(CRL) 2022/2024

SAEED BILAL SADAD

.....Petitioner

Through: Appearance not given

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Yasir Rauf Ansari ASC for Mr.
Yasir Rauf Ansari, ASC for State

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

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21.11.2024

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter as the "Code") [now under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)] has been filed on behalf of the petitioner seeking the following reliefs:

"(i) Set aside the impugned judgment and order dated 21.05.2024 passed by Ld ASJ-03, North District, New Delhi in CRL. Revision Petition no.16/2024 titled as "Saeed Bilal Sadad vs State".

(ii) Allow the petitioner to visit USA for a period of three months, from the date of his leaving India:

(iii) Pass such other or further order/orders, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The brief facts of the case, as per the prosecution, are that the petitioner is an Afghan national and on 29th September, 2013, he was caught



in possession of two passports bearing nos. 28785328 and NF5709481, which were in the name of one Mr. Jowane Omar Jamal of Norway nationality and Mr. Gafor Hakimi of Netherlands nationality, respectively. The petitioner failed to produce his own passport and upon further inspection, it was found that the said passports were not stamped with Indian Visa and the petitioner failed to answer any queries to that effect. Accordingly, an FIR bearing no. 394/13 was registered against the petitioner at Police Station – Mukherjee Nagar, Delhi under Section 420 of the Indian Penal Code, 1860 (hereinafter as the “IPC”) and Sections 12(1)(C)(D)/ 14 of the Foreigners Act, 1946.

3. Thereafter, the petitioner filed an application before the learned Trial Court seeking permission to visit the USA for a period of three months. However, the said application was dismissed by the learned Trial Court vide order dated 23rd December, 2023.

4. Aggrieved by the same, the petitioner filed a revision petition against the said order, which was dismissed by the learned Additional Sessions Judge-03, North District, Rohini Courts, Delhi (hereinafter as the “ASJ”) vide order dated 21st May, 2024 (hereinafter as the “impugned order”) on the ground of the petitioner’s irregular appearance as well as the change of sureties during the course of the proceedings.

5. Aggrieved by the said impugned order, the petitioner has filed the instant petition seeking setting aside of the impugned order.

6. Learned counsel appearing for the petitioner submitted that the petitioner’s right to travel abroad is protected under Article 21 of the Constitution of India and therefore, he is entitled to exercise the same as the trial is still at an initial stage.



7. It is submitted that the learned ASJ has erroneously recorded in its impugned order that the petitioner has not appeared regularly before the learned Trial Court, however, the petitioner has been appearing regularly before the learned Trial Court and has even moved an application to recall the proceedings initiated under Section 82 of the Code.

8. It is submitted that the learned ASJ erred in observing that the petitioner has changed his sureties twice, however, it failed to appreciate that since the matter has been pending since the year 2014, the concerned surety withdrew their sureties during the course of the proceedings. However, the petitioner duly arranged fresh sureties and produced the same before the learned Trial Court.

9. Learned counsel for the petitioner further undertakes that the petitioner shall abide by all the terms and conditions imposed upon him by this Court while allowing the present petition.

10. It is further submitted that the petitioner has not met his aged parents as well as his wife for more than six years and, therefore, it is prayed that considering the settled law of right to travel enshrined under Article 21 of the Constitution of India, the impugned order is liable to be set aside and the instant petition may be allowed.

11. *Per Contra*, learned ASC appearing on behalf of the State vehemently opposed the instant petition submitting to the effect that there is no illegality or error in the impugned order passed by the learned ASJ as the same was in accordance with the settled position of law.

12. It is submitted that the learned ASJ was right in observing that the conduct of the petitioner, wherein, he had failed to appear before the learned Trial Court despite issuing non-bailable warrants as well as initiation of



proceedings under Section 82 of the Code.

13. It is submitted that the learned ASJ has rightly observed that the right to travel abroad cannot be exercised in favour of the petitioner as his presence before the learned Trial Court has been evidently irregular and there is a flight risk.

14. It is submitted that the learned ASJ, in its revisional power, has duly perused the material placed on record and contents of the order dated 23rd December, 2023 passed by the learned Trial Court, thereby rightfully observing that there is no ground of error or irregularity made out therein.

15. It is further submitted that the learned ASJ has rightly observed that the sureties of the petitioner had been withdrawn twice during the course of the proceedings and therefore, in view of the same, it is prayed that the instant petition, being devoid of any merit, is liable to be dismissed.

16. Heard learned counsel for the parties and perused the record.

17. At this juncture, it is imperative to mention that under Section 482 of the Code i.e., Section 528 of the BNSS, the Courts are bestowed with inherent powers which are required to be exercised only to prevent any abuse of process of law or to secure the ends of justice, and such powers must be exercised sparingly.

18. Adverting to the facts of the instant case, this Court has perused the Status Report filed by the State, wherein, a series of incidents were listed out showcasing the irregular presence of the petitioner during the course of proceedings before the concerned Courts. Moreover, despite the issuance of non-bailable warrants and initiation of proceedings under Section 82 of the Code, the petitioner has not regularly made his presence before the Court concerned. Further, it is observed that the petitioner had filed an application



for plea bargaining as well as the recall of the proceedings under Section 82 of the Code, however, he failed to appear before the Court concerned as and when required. It is specifically mentioned in the Status Report that the petitioner has remained absent on 15 out of 31 hearings, thereby, causing difficulty in proceeding with the instant case.

19. At this juncture, it is pertinent to peruse the impugned order passed by the learned ASJ and the relevant paragraphs of the same are as follows –

“4. Having heard the submissions made by Id. counsel for the revisionist, Ld. APP for the State and after gone through the averments of the revision petition and after gone through the trial court record as well as the impugned order dated 23.12.2023, this court is of the considered view that the allegations against the revisionist/accused is that he was living in India without any valid passport and valid VISA and was arrested. The another allegation against the revisionist/accused is also that at the time of his arrest, he was also having two other passports of different persons, one of the passport was reported as lost and the other belongs to a person who has already been expired.

5. That, perusal of the trial court record, it reveals that he is not regular to appear in the court. Vide order dated 22.02.2017, the revisionist/accused remain absent and the co-accused Adil Shah was absconding. NBW were issued against the accused Adil Shah and Bailable Warrant in sum of Rs.5,000/- were issued against the revisionist/accused and the matter was fixed for 10.07.2017 and on the said date, the revisionist/accused and the co-accused again remained absent and NBWs were issued against both of them and the same received back unexecuted and the process u/s 82 Cr.P.C. was issued against the revisionist/accused. On dated 16.01.2018, the revisionist/accused was again remained absent and his counsel moved an application for cancellation of NBW issued against him and dropping the proceedings U/S 82 Cr.P.C. against the revisionist/accused and again on dated 11.07.2018, the revisionist/accused again remain absent and



the process u/s 82 Cr.P.C. was again issued and ordered to be executed by way of publication in the approved Newspaper. Id. counsel for the revisionist/accused has moved an application for cancellation of NBW and again for dropping the proceedings U/S 82 Cr.P.C; however, vide order dated 12.02.2020, the Id. Trial court was pleased to pass the order i.e.

"The NBW are stayed till the next date of hearing and the accused is granted liberty to appear on his own till further orders."

Simultaneously, an application for plea bargaining has also been filed and the same was marked to Id. Link MM for 15.02.2020 at 2.00 pm and thereafter, because of the Pandemic COVID-19 and on dated 16.12.2021, no one has appeared in a plea bargaining proceedings for the last three dates of hearing and the file has been returned back to the court concerned.

6. It is also pertinent to mention that the revisionist/accused again remain absent and again the NBW were issued and the application for cancellation of NBW was also filed and again the same were stayed by the Id. Trial court. Therefore, the revisionist/accused is irregular in appearing before the Id. Trial court. The sureties of the revisionist/accused have also withdrawn their sureties twice. It is the right of an accused to travel, however, while allowing any accused to travel abroad, the court has to secure his presence during the court proceedings to dispose off the case but the appearance of the revisionist/accused is completely irregular. This court has find no reason to interfere with the impugned order passed by the Id. Trial court and the same is passed in accordance with the provisions of law and after mentioning the conduct of the revisionist/accused. Therefore, considering all the facts and circumstances, this court is of the considered view that there is no merit in the revision petition. Therefore, the same stands dismissed."



20. Upon perusal of the same, it is observed that the petitioner has been irregular in appearing before the learned Trial Court and even after issuance of non-bailable warrants against him as well as the initiation of proceedings under Section 82 of the Code, the petitioner has remained absent on various occasions. It was also observed that the petitioner has not only changed his sureties twice during the course of the proceedings, but also filed a plea bargaining application before the Court concerned, wherein, he failed to appear in the said proceedings as well. Therefore, the Court concerned was of the firm opinion that the application to travel abroad cannot be entertained due to the irregular appearance of the petitioner, thereby, making it clear that there is a high probability of petitioner not coming back to India to face the trial.

21. Therefore, taking into consideration the foregoing discussions and the contents of the impugned order as well as the material placed on record, this Court is of the view that the instant matter is not a fit case to exercise its powers under Section 482 of the Code (Section 528 of the BNSS) and in view of the same, this Court does not find any illegality or error in the impugned order passed by the learned ASJ.

22. In light of the above, the impugned order dated 21st May, 2024 passed by the learned Additional Sessions Judge-03, North District, Rohini Courts, Delhi in Criminal Revision Petition bearing no. 16/2024 is upheld.

23. Accordingly, the instant petition, being devoid of any merit, is, hereby, dismissed along with the pending applications, if any.

CHANDRA DHARI SINGH, J

NOVEMBER 21, 2024

Rt/mk/ryp

[Click here to check corrigendum, if any](#)