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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 5711/2024, CRL.M.A. 21816/2024
PRAMOD CHAUHANPetitioner
Through: Mr. Aditya Gaur, Mr. Balwant Singh,
Ms. Chhavi Bhardwaj and Mr. Ajay
Raj Singh, Advocates.

versus

THE STATE NCT OF DELHI AND ANRRespondents
Through: Ms. Kiran Bairwa, APP.
Mr. Siddharth Sharma, Adv. for R-2.

+ CRL.M.C. 5732/2024, CRL.M.A. 21880/2024
PRAMOD CHAUHANPetitioner
Through: Mr. Aditya Gaur, Mr. Balwant Singh,
Ms. Chhavi Bhardwaj and Mr. Ajay
Raj Singh, Advocates.

versus

THE STATE NCT OF DELHI AND ANR.Respondents
Through: Ms. Kiran Bairwa, APP.
Mr. Siddharth Sharma, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **26.07.2024**

CRL.M.A. 21817/2024 in CRL.M.C. 5711/2024

CRL.M.A. 21881/2024 in CRL.M.C. 5732/2024

Exemptions allowed, subject to just exceptions.

Applications stand disposed of.

CRL.M.C. 5711/2024, CRL.M.A. 21816/2024

CRL.M.C. 5732/2024, CRL.M.A. 21880/2024

1. Separate petitions under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') have been preferred on behalf of the petitioner for setting aside order dated 18.04.2024 whereby process under



Section 82 Cr.P.C. was issued by the learned Appellate Court in the criminal appeal preferred on behalf of the petitioner, alongwith order dated 29.05.2024 whereby, process server was summoned for recording his statement.

2. Issue notice. Learned APP for the State and learned counsel for respondent No. 2 appear on advance notice and accept notice.

3. Perusal of order dated 12.03.2024, appended on record reveals that on aforesaid date, petitioner joined through VC but failed to appear in person, as well as failed to deposit 20% of the compensation amount directed by the learned Appellate Court. On 18.04.2024, petitioner again failed to appear before the learned Appellate Court resulting in passing of impugned order, whereby, process under Section 82 Cr.P.C. was directed to be issued against him.

4. Learned counsel for petitioner (appellant before learned Appellate Court) submits that petitioner had duly joined the proceedings through VC on 12.03.2024 and absence of the petitioner on 18.04.2024 was for bona fide reasons, since he had preferred an application for anticipatory bail in some other case. It is urged that proceedings under 82 Cr.P.C. could not have been directed since the petitioner had been participating in the proceedings.

5. On the other hand, petitions are opposed by learned counsel for respondent No. 2 / complainant and submits that petitioner has been avoiding to appear in the appellate proceedings and has failed to comply with the order dated 21.07.2023 to deposit 20% of the compensation amount.

6. This Court is of considered opinion that learned Trial Court erred in directing issuance of NBWs since petitioner had duly joined through VC on 12.03.2024. An opportunity should have been granted to appear in person prior to issuing the NBWs. Also, the non-appearance on 18.04.2024 has been



duly explained by the petitioner. Further, deposit of 20% of compensation amount as directed by learned Appellate Court in appeal, is not an absolute rule and the court is required to consider whether the case falls in exception or not, in view of observations passed by Hon'ble Supreme Court in ***Jamboo Bhandari vs. Madhya Pradesh State Industrial Development Corporation Ltd. & Ors.*** 2023 (10) SCC 446.

7. Considering the facts and circumstances, proceedings under Section 82 Cr.P.C. initiated by the learned Appellate Court vide order dated 18.04.2024 alongwith consequential order dated 29.05.2024, are set aside, with the directions to the petitioner to regularly appear in person before the learned Appellate Court, failing which it shall be at liberty to initiate, appropriate proceedings in accordance with law.

Further, the deposit of 20% of the compensation amount shall not be insisted upon during the pendency of proceedings before learned Appellate Court which shall be disposed of in a time bound manner, preferably within a period of 60 days from the date of hearing fixed before the learned Appellate Court.

Petitions are accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to learned Appellate Court for information and compliance.

ANOOP KUMAR MENDIRATTA, J.

JULY 26, 2024/R