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

+ **W.P.(CRL) 2846/2024 & CRL.M.A. 27682/2024**

CHANDAN KUMAR

.....Petitioner

Through: Mr. Deepak Chauhan, Mr. Kamal Chauhan, Ms.Pooja Chauhan and Mr. H.L. Gandhi, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Chavi Lazarus and Mr. Kshitiz Garg and Mr. Ashvini Kumar Advocates for Mr. Amol Sinha, ASC (CrI.) for the State with SI Aashish Malik, P.S.: South Rohini.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

12.09.2024

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CRL.M.A. 27683/2024 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed-of.

W.P.(CRL) 2846/2024

By way of the present petition filed under Article 226 of the Constitution of India, the petitioner impugns orders dated 26.03.2024 and 02.09.2024 passed by the learned Judicial Magistrate First Class, Rohini Courts, Delhi in Cr. Case No. 5148/2019.



2. In essence and substance, Mr. Deepak Chauhan, learned counsel appearing for the petitioner submits, that the petitioner is an accused in FIR No.224/2018 registered under sections 279/338 of the Indian Penal Code, 1860 ('IPC') at P.S.: South Rohini, Delhi to which section 304-A IPC and sections 181/185 of the Motor Vehicles Act, 1988 have been subsequently added. Furthermore, it is submitted that NBWs that had been issued *vide* order dated 14.12.2022 were directed to be executed afresh *vide* order dated 26.03.2024 by the learned Magistrate due to his non-appearance.
3. Mr. Chauhan submits, that pursuant thereto the petitioner duly appeared before the learned Magistrate and his presence was also recorded *vide* order dated 27.10.2023; however, the NBWs were not expressly cancelled by the learned Magistrate.
4. Mr. Chauhan submits, that subsequently the petitioner was again unable to appear before the Magistrate on a subsequent date, *i.e.* 26.03.2024, since he was unwell though he was represented by counsel on that date. However, without appreciating the petitioner's predicament, *viz.* that he was suffering from fever, the learned Magistrate dismissed the petitioner's application seeking exemption from appearance, holding that the application was not supported by any documents, and directed that the NBWs issued earlier *vide* order dated 14.12.2022 be executed afresh for the next date of hearing, *i.e.* 23.09.2024.
5. Mr. Chauhan further submits, that the petitioner impugned order dated 26.03.2024 before the learned Additional Sessions Judge, Rohini Courts, New Delhi by way of a criminal revision petition. However,



vide order dated 05.09.2024, the learned ASJ has rejected the challenge, holding that since the petitioner's only grievance was that the learned Magistrate had not disposed-of his application seeking cancellation of NBWs, which was an interlocutory order, a revision petition was not maintainable. It is pointed-out however, that the learned ASJ requested the learned Magistrate to advance the date of hearing in the application seeking cancellation of the NBWs and to dispose-of the application at the earliest.

6. It is the petitioner's grievance that despite the request contained in order dated 05.09.2024, the learned Magistrate has not taken-up and decided the petitioner's application seeking cancellation of NBWs, and, *vide* order dated 02.09.2024, has kept that application pending for the next date, *i.e.* 23.09.2024. Mr. Chauhan accordingly argues, that while on the one hand, the petitioner's application seeking cancellation of NBWs has been pending consideration before the learned Magistrate, on the other hand, the Investigating Officer is seeking to take the petitioner into custody.
7. Learned ASC is present on behalf of the State.
8. However, in view of the prayer made, it is not considered necessary to issue notice or to call-for any response from the State in the matter.
9. In the circumstances of the case, the present petition is disposed-of, directing the learned Magistrate to take-up and decide the petitioner's application seeking cancellation of NBWs on a date at least 01 week before the next date of hearing fixed in the matter, *viz.* 23.09.2024.
10. The petition stands disposed-of in the above terms.



11. Pending applications, if any, also stand disposed-of.
12. A copy of this order be given *dasti* under signatures of the Court Master.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 12, 2024/ak