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

+ **CRL.M.C. 7433/2024 & CRL.M.A. 28401/2024**

PRIYANKA GUPTA

.....Petitioner

Through: Mr. R.P. Singh, Mr. Yash Aggarwal
and Mr. Pankaj Chaudhary,
Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Anil Kumar, P.S.: Najaf Garh.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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20.09.2024

CRL.M.A. 28402/2024

Exemption granted, subject to just exceptions.

The application stands disposed of

CRL.M.C. 7433/2024

By way of the present petition filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner impugns order dated 05.07.2024, whereby the learned JMFC, Dwarka District Courts, New Delhi has been pleased to dismiss the petitioner's application, by which the petitioner had sought setting-aside of order dated 27.05.2024, whereby the court had directed issuance of NBWs against the petitioner. The petitioner also seeks quashing and cancellation of NBWs issued by the learned Magistrate *vide* orders dated 27.05.2024 and 11.07.2024.

2. Mr. R.P. Singh, learned counsel appearing for the petitioner submits, that the petitioner was never served with the notice issued by the



Investigating Officer ('I.O.') under section 41-A of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), seeking the petitioner's presence for investigation in case FIR No. 0243/2023 dated 17.06.2023 registered under sections 420/506/120B of the Indian Penal Code, 1860 ('IPC') at P.S.: Najaf Garh, Delhi.

3. The record however shows, that 03 notices under section 41-A of Cr.P.C. dated 07.10.2023, 26.11.2023 and 02.05.2024 were issued to the petitioner. Mr. Singh submits, that the notices were issued to the petitioner's Najaf Garh address, and though the petitioner owns that place, she does not reside there and has shifted to Bareilly, Uttar Pradesh.
4. Upon being queried, learned counsel says that though it is correct that the last notice dated 02.05.2024 issued under section 41-A of Cr.P.C. was pasted on the petitioner's Bareilly address, however even-so she was not aware of the said notice.
5. Issue notice.
6. Mr. Utkarsh, learned APP appears for the State on advance copy; accepts notice; and submits that as the record would show, the petitioner has been evading investigation ever-since the date of the registration of the FIR on 17.06.2023; and that even on the petitioner's own reckoning, she was served with the last notice under section 41-A of Cr.P.C. which was pasted at her address in Bareilly.
7. Learned APP further points-out, that as a record would also show, *vide* order dated 11.07.2024, the learned Magistrate has also issued fresh NBWs against the petitioner, returnable for 09.08.2024.



8. Learned APP also points-out, that even in the memo of parties filed in the present petition, the petitioner has given her Najaf Garh address, on which address the section 41-A Cr.P.C. notices were sent to her initially; and that therefore, the petitioner cannot deny having been duly served with the said notices.
9. Furthermore, learned APP also informs the court that *vide* order dated 20.08.2024, process under section 82 of Cr.P.C. has now been issued against the petitioner, and that the process has also been executed.
10. In the circumstances, learned APP opposes the prayer made in the present petition.
11. After carefully considering the record, this court is satisfied that the petitioner was aware of the section 41-A Cr.P.C. notices issued to her by the I.O.; and that there is also no warrant for the petitioner to say that even the notice pasted at her Bareilly address on 02.05.2024 was not *duly* served upon her.
12. At this stage, Mr. Singh urges, that the petitioner is a lady, about 42 years of age, and is ready and willing to join investigation and to submit to the processes of the learned trial court in respect of the subject FIR.
13. In this view of the above, counsel prays that this court may pass appropriate orders to protect the liberty and dignity of the petitioner, subject of course to ensuring that investigation in the matter is not hampered.
14. Upon an overall consideration of the facts and circumstances of the case, the present petition is disposed-of, setting-aside order dated 27.05.2024; and quashing and recalling the NBWs issued by the



learned Magistrate *vide* orders dated 27.05.2024 and 11.07.2024; subject however to recording the undertaking offered by counsel on behalf of the petitioner, that she shall present herself before the learned Magistrate on 01.10.2024, which is stated to be the next date of hearing in the matter, failing which the petitioner shall be liable to be arrested *forthwith*.

15. It is clarified that nothing in this order shall prevent the learned Magistrate from proceeding with the matter, once the petitioner appears before that court, as may be required, in accordance with law.
16. The petition is disposed-of in the above terms.
17. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 20, 2024/ak