



\$~46

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

+ **CRL.M.C. 9887/2024**

NITIN SHARMA

.....Petitioner

Through: Mr. Satish Aggarwala, Mr. Karan Ahuja, Mr. Anubhav Tyagi, Mr. Kuldeep Jauhari, Ms. Alka Nupur Singh, Ms. Manisha Yadav, Mr. Sarthak Chugh, Ms. Samta Sharma, Mr. Sahil Ahuja and Mr. Satish Tripathi, Advs. along with petitioner.

versus

STATE GOVT. OF NCT OF DELHI & ANR.Respondents

Through: Mr. Digam Singh Dagar, APP for State with SI Yogesh Kumar, DIU, Rohini and SI Rimpi Devi, DPA, Dwarka.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

% **17.12.2024**

CRL.M.A. 37873/2024 (exemption)

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CRL.M.C. 9887/2024

3. The present petition has been filed under Section 528 of BNSS, 2023 seeking the following reliefs:

“i. *Set aside the impugned order dated 14.10.2024 passed by Ld. Trial Court of Sh. Kapil Kumar, ASJ, North-West, Rohini Courts dismissing the applications bearing Misc. Crl. Nos.*



- 471/2024, 472/2024, 473/2024 and 475/2024 pursuant to FIR No. 94/2021 in the interest of justice.*
- ii. Take necessary actions as per the provisions of Section 389 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to address the deliberate and repeated non-appearance of the Respondent No. 2.*
 - iii. Issue directions to drop the Prosecution witness.*
 - iv. Order that the matter (SC/19/2022) be listed for day-to-day trial before Sh. Kapil Kumar, ASJ, North-West, Rohini Courts, or*
 - v. Mandate that the proceedings be concluded within a specified time frame.”*

4. Mr. Satish Aggarwala, learned counsel appearing on behalf of the petitioner invites attention of the Court to the order dated 14.12.2023 to contend that the respondent no.2/prosecutrix is neither appearing physically nor she is co-operating in the progress of trial.

5. He submits that option was also given to the prosecutrix to get her testimony recorded through VC. However, she did not divulge her address, where she is residing in London. Accordingly, the Court was constrained to observe that in such circumstances the testimony has to be recorded physically.

6. He further submits that in the order dated 14.12.2023, it has also been recorded that prosecutrix stated that she would be visiting India in the month of November, 2024 and, as and when she would come to India, she would move an application for preponement of the hearing of trial.

7. He submits that the prosecutrix came to India in September, 2024 but she never moved an application before the learned Trial Court seeking preponement of hearing for recording of her testimony.



8. He also submits that in the above factual backdrop, the petitioner was constrained to move four separate applications before the learned Trial Court, *inter alia*, praying for – (i) speedy trial; (ii) for dropping of respondent no.2/prosecutrix from the list of witnesses; (iii) for taking action against respondent no.2/prosecutrix for non-appearance despite service of summons and; (iv) seeking early and urgent hearing of the case.

9. He submits that all the said applications were dismissed by the learned Trial Court *vide* impugned order dated 14.10.2024. However, the Court issued summons to the prosecutrix and directed the IO to effect service of summons upon the prosecutrix at London after ascertaining the address of the prosecutrix by contacting her.

10. He submits that for the time being the petitioner is confining his prayer only to the direction to the learned Trial Court to expedite the trial in a time-bound manner, as well as, to take coercive steps against the respondent no.2 in case she does not appear.

11. In view of the above, issue notice. Mr. Digam Singh Dagar, learned APP appearing on behalf of the State accepts notice. He submits that he has no objection in case necessary directions are given for the purpose of expeditious disposal of the trial.

12. In view of the above, the learned Trial Court is directed to ensure the presence of the respondent no.2/prosecutrix at the earliest and, if need be, coercive action be taken against the prosecutrix to procure her presence.

13. In any case, let the trial be expedited by the learned Trial Court, preferably, within a period of one year.



14. The concerned IO/SHO will make an endeavour to bring the present order to the notice of the respondent no.2/prosecutrix as well.
15. With the aforesaid directions, the petition stands disposed of.

DECEMBER 17, 2024
aj

VIKAS MAHAJAN, J