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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 10244/2024, CRL.M.A. 39276/2024, CRL.M.A.
39277/2024, CRL.M.A. 39275/2024

SANDEEP GULLAH

.....Petitioner

Through: Mr. Rakesh Malhotra, Advocate.

versus

STATE NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Mukesh Kumar, APP for State
with SI Sandeep, P.S. Malviya Nagar.
Mr. Kshitiz Khara, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

24.12.2024

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1. Matter has been received by way of transfer.
2. By way of present petition, the petitioner, who has been arrayed as an accused in the proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881, seeks setting aside of the order dated 24.03.2023 passed by M.M. (NI Act), Digital Court-02, South, Saket Courts, New Delhi in CC No. 2968/2022 vide which the petitioner was declared Proclaimed Offender and as a consequence FIR No. 259/2024 was registered under Section 174-A IPC at P.S. Malviya Nagar, Delhi.
3. Mr. Malhotra, Ld. counsel for the petitioner submits that Trial Court had issued summons on 19.04.2022 and were made returnable on 12.07.2022. He submits that at the time of receipt of legal notice dated 10.02.2020 the petitioner was residing in Delhi and also responded to the



same vide reply dated 26.02.2020. The complaint, however, came to be filed after considerable time on 06.03.2022 and by that time, the petitioner had shifted from Delhi to Goa. In this regard, petitioner has filed copy of a 'Leave and Licence Agreement' dated 05.06.2022 entered into between the petitioner and one 'Braganza and Fulari Ventures Pvt. Ltd.' with respect to residential flat bearing No. F-8, First Floor, Block D, B&F Amber Gardens Phase II at Siolim, Bardez, Goa. It is contended that on account of the petitioner shifting to new address in Goa, the summons remain unexecuted. The Trial Court instead of issuing warrants, directed for issuance of NBWs which were also attempted to be served at the address in Delhi. In between, on 22.08.2022, the Trial Court had also directed the complainant/respondent No.2 to verify the petitioner's address however, in absence of any further documentation, proceedings under Section 82 Cr.P.C. were initiated on 12.10.2022 and in the aforesaid backdrop, the petitioner was declared Proclaimed Offender on 24.03.2023. Consequently, the aforesaid FIR came to be registered on 03.05.2024.

4. Ld. counsel for the petitioner, on instructions from the petitioner, submits that petitioner at no point of time had any intention to disobey the Court's directions and his non-appearance before the Court was completely unintentional and due to absence of any knowledge of any proceedings pending before the Trial Court. He further submits that the petitioner undertakes to appear on each and every date before the Trial Court unless specifically exempted. The undertaking given on behalf of the petitioner is accepted and taken on record and he is made bound by the same.

5. On the other hand, Mr. Mukesh Kumar, Ld. APP for the State, who is duly assisted by Mr. Khera, ld. counsel for complainant/respondent No.2,



has opposed the prayer. It is contended that petitioner was rightly proceeded against and declared Proclaimed Offender for having remained absent before the Trial Court for a period of more than two and a half years. It is contended that the petitioner was rather duly served through WhatsApp and the service by post was in fact refused.

Additionally, Ld. counsel for respondent No.2 submits that complainant/respondent No.2 is desirous of having his complaint expedited. He, on instructions, submits that respondent No.2 has no objection if the petitioner's prayer is allowed however, subject to petitioner honouring his undertaking that he shall regularly appear before the Trial Court and also subject to imposition of exemplary cost. He further submits that the next date before the Trial Court is fixed for 30.01.2025.

6. I have heard the learned counsels for the parties and gone through the records.

7. A plain reading of the provision would show that for issuance of a proclamation under Section 82 Cr.P.C., the Court has to be satisfied on the basis of material produced that a person despite having knowledge of proceeding is avoiding the process issued. The factum of the person absconding and concealing himself deliberately both prior to issuance of the proclamation under Section 82 (1) and after it needs to be established before any person is declared a PO. Moreover, Section 82(1) mandates the existence of 'reason to believe' for the Court reaching a finding that a person is absconding or evading summons. This means that the issuance of proclamation cannot be done in a mechanical manner. The same has to be a result of due application of mind and the satisfaction alongwith reasons thereof should be recorded. Section 82(4) also speaks of the Court



pronouncing a Proclaimed Offender ‘after making such inquiry as it thinks fit.’ This is in consonance with the idea that the proclamation or pronouncement should be done after application of mind.

8. The issuance of proclamation and declaration are intricately linked with the preceding process of issuance and execution of warrants. Non-bailable warrants curtail the liberty of a person and hence should never be issued hastily and without proper assessment of facts and due application of mind. The intent of issuing warrants is that the concerned person is made aware of the proceedings pending against him. The Supreme Court in Inder Mohan Goswami v. State of Uttaranchal, reported as (2007) 12 SCC 1, have elaborately discussed the principals involved with issuance of non-bailable warrants in the following manner:-

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or*
- the police authorities are unable to find the person to serve him with a summon; or*
- it is considered that the person could harm someone if not placed into custody immediately.*

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable



or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

9. In the present case, the process under Section 82 was issued on 12.10.2022. A Leave and Licence Agreement dated 05.06.2022 has been produced by the petitioner which reflects that he had shifted to Goa before the summons/warrants came to be issued. The Trial Court in the present case after the issuance of summons, directly issued NBWs on the first date of hearing. Nothing has been shown to prove that the petitioner was having knowledge of the proceedings and was deliberately avoiding the summons.

10. Considering the averments and submissions made on behalf of the petitioner as well as undertaking tendered and the no objection given on behalf of the complainant/respondent No.2, the present petition is allowed and impugned order is set aside as well as the consequent FIR is quashed, subject however, to cost of Rs.50,000/- to be paid by the petitioner to the respondent No.2 by way of a demand draft on or before 30.01.2025. The petitioner is directed to appear before the Trial Court on 30.01.2025.

11. Petition is disposed of in the above terms alongwith pending applications.

MANOJ KUMAR OHRI, J

DECEMBER 24, 2024/ga