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

+ **CRL.M.C. 152/2025**

INSP. DURGADAS

.....Petitioner

Through: Mr. Ashok Kumar, Ms. Reena Bharti
& Mr. Surinder pruthi, Advocates
with petitioner (through VC).

Versus

STATE (N.C.T. OF DELHI) & ANR.

.....Respondents

Through: Mr. Manoj Pant, APP for the State
with SI Kirandeep Kaur, P.S.: K.M.
Pur.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

14.01.2025

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CRL.M.A. 844/2025 (Exemption)

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

CRL.M.C. 152/2025

3. The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter 'BNSS') has been filed on behalf of the petitioner seeking setting aside and cancellation of the Non-Bailable Warrants (NBWs), issued against the petitioner *vide* impugned order dated 18.12.2024, passed by the learned Additional Sessions Judge, in case arising out of FIR bearing no. 71/2020, registered at Police Station Kotla Mubarak Pur, New Delhi, for offences punishable under Sections 354/308/34 of the



Indian Penal Code, 1860 (hereafter '*IPC*').

4. The learned counsel appearing for the petitioner submits that in this case, though the order dated 18.12.2024 of the learned Trial Court mentions that NBWs have to be issued against the witness, i.e. PW SI Durga Das, the said order also mentions the amount of Rs.5,000/-. The relevant extract of the order is set out below:-

“PW SI Durga Dass and PW Ct. Arvind are absent despite being bound down on the last date of hearing. Accordingly, NBWs be issued against PW SI Durga Dass and PW Ct. Arvind in the sum of Rs. 5,000/- each to be executed through concerned DCP returnable for the NDOH. MHC(M) be summoned for the NDOH.”

5. Having heard the learned counsel appearing on behalf of both the parties, it appears to this Court that the learned Trial Court intended to issue Bailable Warrants in the sum of Rs. 5,000/- each to PW SI Durga Dass (petitioner herein) and PW Ct. Arvind. It seems that the word 'NBWs' has been inadvertently mentioned in the order.

6. The grievance against the aforesaid order was rased by the petitioner before the learned Trial Court. In this regard, the impugned order dated 10.01.2025 reads as under:-

“This is an application seeking cancellation of NBWs issued against the applicant Inspector Durgadas on the grounds that applicant is PW-I in the present case and presently serving as Inspector with CBI, New Delhi; that he appeared before the Court on 26.11.2024 and was bound down for the NDOH i.e. 18.12.2024 on which date he was deputed as a team member for the Joint Surprise Checking at Delhi Cantonment Board and he had to report at CBI Headquarters at 10.00 a.m.; that he conveyed about his inability to the Naib Court of Court no. 502 however his request could not be conveyed to this Court; that in the meanwhile this Court issued NBWs against the applicant; that



non appearance of the applicant is neither intentional nor deliberate but due to the above said reasons.

I have heard the Ld. Addl.P.P. for the State as well as Id. counsel for the applicant and perused the record.

The Court directed the applicant to appear in person however Id. counsel for the applicant submits that applicant cannot comply with the direction of this Court. In view of the same, the present application is hereby dismissed.”

7. It is evident from a reading of impugned order dated 10.01.2025 that the learned Trial Court did not pay attention to the contents of the last order, which essentially was an order issuing Bailable Warrants against the witness. In any case, since the witness had been bound down and had not appeared on the date, the first recourse to be adopted was issuance of Bailable Warrants.
8. The learned counsel for the petitioner has also produced a copy of the order, wherein the names of the officers who had to report on 18.12.2024 have been enlisted. The same is taken on record.
9. The learned Trial Court has dismissed the application for cancellation of NBWs on the ground that the applicant did not appear in-person before the Court. The applicant was directed to appear in-person since it was presumed that NBWs have been issued against him.
10. Considering the same, this Court is of the opinion that the impugned order has been passed without application of mind. The impugned order dated 10.01.2025 is, therefore, set aside. The order dated 18.12.2024 is also set aside to the extent of issuance of NBWs issued against the petitioner herein. The applicant will appear before the learned Trial Court, as and when he is directed to.
11. In view of the above, the present petition is disposed of.



12. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 14, 2025/at

Click here to check corrigendum, if any