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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 372/2025 & CRL.M.A. 1814/2025**

KRISHAN KUMAR

.....Petitioner

Through: Mr. Arvind Kumar and Abhay Kumar
Mishra, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for the State
SI Kuldeep, Crime Branch

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

22.01.2025

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1. The present petition has been filed under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), previously Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C), challenging the order dated 10.01.2025 passed by the learned ASJ-II, Special Judge (NDPS), North West District, Rohini Courts, Delhi (Trial Court) dismissing the Petitioner's application for cancellation of Non-Bailable Warrants and dropping the proceedings initiated under Section 84 BNSS.

2. Briefly, the facts of the case, as per the prosecution, are that acting on secret information, a raid was conducted on 02.09.2024 at E-2 Block, Sultanpuri, Delhi. During the raid, 18 grams of heroin were recovered from the possession of co-accused Alka, and 293 grams of heroin were recovered from co-accused Alka's house. During interrogation, co-accused Alka disclosed that she had procured the contraband from the Petitioner herein.



3. Based on Alka's disclosure, a notice dated 18.09.2024 under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), was served upon the Petitioner. However, the Petitioner failed to join the investigation, leading to the issuance of a Non-Bailable Warrant (NBW) by the Trial Court on 20.09.2024 and initiation of Section 84 BNSS proceedings on 18.10.2024.
4. The Petitioner challenged the order dated 20.09.2024 before a Co-ordinate bench of this Court in CRL.REV. P. 1224/2024. By order dated 23.10.2024, the Co-ordinate bench set aside the NBW, subject to the condition that the Petitioner would join the investigation and appear before the Investigating Officer on 25.10.2024. The order dated 23.10.2024 was passed as the Petitioner gave an undertaking that he shall appear before the IO on 25.10.2024.
5. However, the Petitioner failed to comply with the aforesaid undertaking and did not join the investigation. Consequently, a fresh NBW was issued against the Petitioner on 26.11.2024, which remained unexecuted. The Petitioner's challenge to this NBW was dismissed by the Coordinate bench on 20.12.2024 in CRL.M.A. 38677/2024 in view of the wilful non-compliance of the undertaking recorded in order dated 23.10.2024. Subsequently, proceedings under Section 84 of BNSS were again initiated against the Petitioner on 12.12.2024.
6. During the course of hearing, learned Additional Public Prosecutor (APP) has stated that Petitioner has suppressed that he had filed an application for anticipatory bail, which was withdrawn by the Petitioner on 05.11.2024.



7. The Learned Counsel for the Petitioner submits that the Trial Court erroneously initiated proceedings under Section 84 of BNSS without following due process. He contends that after the order dated 20.09.2024 issuing the NBW was set aside by the High Court on 23.10.2024 and the Trial Court should have issued summons to the Petitioner before initiating proceedings under Section 84 of BNSS. He further submits that upon learning of the Section 84 proceedings, the Petitioner approached the Trial Court with an undertaking to join the investigation, but the application was erroneously dismissed vide impugned order dated 10.01.2025.

8. On the issue of the Petitioner failing to join the investigation on 25.10.2024 despite undertaking given before the Coordinate bench before 23.10.2024, learned counsel submits that the Petitioner was unable to join investigation due to health constraints.

9. In reply, the learned APP states that all procedural requirements were duly followed before initiating proceedings under Section 84 of BNSS. The Trial Court, being satisfied with the due process, initiated the proceedings accordingly. He highlights that the Petitioner had filed three anticipatory bail applications before the Trial Court, all of which were dismissed on 26.09.2024, 08.10.2024, and 05.12.2024.

10. He placed before this Court a report from the SCRB, Delhi, indicating the Petitioner's involvement in criminal activities. Apart from the present FIR, the Petitioner is an accused in two other cases: (i) FIR No. 336/2023 registered at PS Sultanpuri under Sections 33/38/58 of the Delhi Excise Act, 2009, and (ii) FIR No. 358/2023 registered at PS Aman Vihar under Section 33 of the Delhi Excise Act, 2009.



11. He states that the interrogation of the Petitioner is required as the co-accused Alka has stated that the commercial quantity of heroin recovered from her was procured from the Petitioner herein. He states that investigation is at the initial stage and the Petitioner is obstructing the investigation by not joining.

12. This Court has heard the learned counsels for the parties and perused the record.

13. Vide order dated 23.10.2024 the Coordinate bench of this Court in CRL.REV.P. 1224/2024, noting the undertaking of the Petitioner that he would join investigation make itself available before the IO on 25.10.2024, had cancelled the NBW issued on 20.09.2024. The order dated 23.10.2024 specifically records that in case the petitioner fails to appear before the IO on the date fixed the state would be at liberty to take the appropriate actions.

14. The petitioner is unable to justify his conduct of non-joining the investigation. The ground that Petitioner was unwell cannot not be accepted as reasonable because that same was not conveyed to the IO for fixation of another date. Moreover, till date Petitioner has not joined the investigation despite passage of over four months.

15. The ground of Petitioner that coordinate bench of this Court vide Order dated 23.10.2024 has set aside the Order dated 20.09.2024 passed by Trial Court issuing NBW against the petitioner and the proceedings under Section 84 of BNSS cannot be initiated against the Petitioner on the basis of order dated 20.09.2024 is misconceived because of the fact that Order dated 23.10.2024 was a conditional order passed by recording the undertaking of the Petitioner and without going into the merits of the matter and it was specifically recorded that in case Petitioner fails to join investigation state is



at liberty to take appropriate actions. Moreover, as recorded in the impugned order dated 10.01.2025 on 26.11.2024 fresh NBW were also issued against the Petitioner which remain unexecuted therefore, the Petitioners contention of procedural lapse is without any merit.

16. The Petitioner's wilful non-joining of the investigation till date despite being aware of the notice dated 18.09.2024 and in breach of the undertaking given to this Court on 23.10.2024 in CRL.REV.P. 1224/2024 makes out a sufficient case for initiation and continuation of Section 84 BNSS proceedings.

17. The Hon'ble Supreme Court in the case of **Dhruvaram Murlidhar Sonar v. State of Maharashtra**¹, examining the power of this Court in Section 482 CrPC held that these powers are to be used in an exemplary situation to secure the ends of the justice and to prevent the abuse of process of any court. The relevant extract of the said Judgement reads as under :-

“8. It is well settled that exercise of powers under Section 482 CrPC is the exception and not the rule. Under this section, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions “abuse of process of law” or “to secure the ends of justice” do not confer unlimited jurisdiction on the High Court and the alleged abuse of process of law or the ends of justice could only be secured in accordance with law, including procedural law and not otherwise.”

18. Taking judicial notice of the Petitioner's non-compliant attitude in failing to join the investigation and disregarding the orders issued by the Co-ordinate Bench of this Court and the learned Trial Court, this Court is disinclined to grant any relief to the Petitioner. There is no error in



continuation of the Section 84 BNSS proceedings. Consequently, the present petition is dismissed, along with all pending applications.

MANMEET PRITAM SINGH ARORA, J
JANUARY 22, 2025/msh/AKT

Click here to check corrigendum, if any

¹ (2019) 18 SCC 191