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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 3003/2025 & CRL.M.As. 13355/2025, 13356/2025**
JITENDRA YADAVPetitioner

Through: Mr. Hemant Kumar, Mr. Bhavishya Mohaniya and Ms. Suchitra Singh, Advocates.

versus

STATE GOVT. OF NCT OF DELHIRespondent
Through: Mr. Mukesh Kumar, APP.
SI Harshvardhan, P.S. Farsh Bazar.
Inspector Vipin Kumar.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
01.05.2025

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1. The present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 is directed order dated 3rd April, 2025 passed by JMFC (Shahdara), Karkardooma Courts, in CR Case No. 75617/2016 titled "***State v. Jitender Yadav***" whereby non-bailable warrants were directed to be issued against the Petitioner.
2. The proceedings emanate from FIR No. 170/2012, registered at Police Station Farsh Bazar for the offences under Sections 279 and 338 of the Indian Penal Code, 1860. The said case is presently pending adjudication before the Trial Court in CR Case No. 75617/2016, wherein the Petitioner is arrayed as an accused.
3. Counsel for the Petitioner submits that the Petitioner's non-appearance on the relevant date was not wilful, but occasioned by medical

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exigency. It is submitted that the Petitioner sustained injuries in an accident on 8th June, 2024, and was advised strict bedrest by the treating physicians, rendering him physically incapable of attending court proceedings on the date in question. Supporting medical documents have been placed on record to substantiate this claim.

4. Counsel for the Petitioner submits that the Petitioner has not disputed the identity of the Complainant. He states that the Petitioner shall appear before the Trial Court through video conferencing mechanism, in order to ensure that the proceedings are not further delayed by his temporary physical limitation.

5. On the other hand, Mr. Mukesh Kumar, APP for the State, opposes the petition and contends that the Petitioner has shown a pattern of absenteeism, having failed to appear on at least four prior occasions. It is argued that the absence on 3rd April, 2025, must be viewed not in isolation, but as part of a continuing disregard for the judicial process, which, on an earlier occasion, prompted the initiation of proceedings under Section 82 of the Code of Criminal Procedure, 1973. The Trial Court, in its impugned order, recorded its disapproval of the Petitioner's conduct in categorical terms, observing: *"Considering the conduct of the accused and the fact that he has not appeared even today, application stands cancelled and disposed of"*.

6. The Court has considered the submissions advanced and perused the material on record. While the State's concerns regarding the Petitioner's past defaults are not unfounded, the present absence appears, *prima facie*, to be justified on account of medical grounds. The records placed before this Court do lend credence to the explanation that the Petitioner's non-

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appearance was not wilful, but compelled due to his physical condition. Although the Petitioner's conduct in the past may warrant caution, the issuance of non-bailable warrants, which carry a degree of severity, must always be tempered by proportionality, particularly where sufficient explanation is offered.

7. In the considered view of this Court, a balance must be struck between securing the presence of the accused and ensuring that the process of law is not used punitively in cases where *bona fide* explanations are offered. Since the Petitioner has undertaken to join the proceedings through video conferencing, this Court finds it appropriate, in the interests of justice, to set aside the issuance of non-bailable warrants.

8. Accordingly, the non-bailable warrants issued against the Petitioner are hereby cancelled. The Petitioner is directed to appear before the Trial Court on the next date of hearing *via* video conferencing. Thereafter, the Trial Court shall be at liberty to issue further directions regarding his personal appearance, should it find such presence necessary. The Petitioner shall fully comply with any such directions.

9. With the above directions, the present petition is disposed of along with pending applications.

SANJEEV NARULA, J

MAY 1, 2025

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