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

+ CRL.M.C. 527/2023

FAHIM

..... Petitioner

Through: Mr. Aditya Aggarwal with Ms. Pooja
Roy, Advocates.

versus

STATE

..... Respondent

Through: Ms. Meenakshi Dahiya, APP for the
State with SI Satish Kumar, P.S.:
Seelampur.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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25.01.2023

CRL.M.A. 2087/2023

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

Application stands disposed-of.

CRL.M.C. 527/2023

By way of the present petition filed under section 482 of the Code of Criminal Procedure 1973, the petitioner, who is presently in judicial custody having been remanded after being produced against a non-bailable warrant, seeks setting-aside of orders dated 03.01.2023 and 17.01.2023 whereby the learned ASJ was pleased to issue non-bailable warrants ('NBWs') for the production of the petitioner, and thereafter to reject his application for cancellation of the NBWs remanding him to judicial custody.

2. Mr. Aditya Aggarwal, learned counsel appearing for the petitioner fairly submits that in an earlier round, *vide* order dated 11.05.2022,

NBWs were issued by the learned ASJ against the petitioner since he had failed to appear at the hearing when prosecution evidence was to be recorded. Counsel submits that the cause for non-appearance was a wrong date having been taken-down by counsel; and appreciating this fact, *vide* order dated 27.05.2022, the learned ASJ recalled and cancelled the NBWs that were issued at that time.

3. It is submitted that on 03.01.2023 the matter was fixed for recording prosecution evidence; but the petitioner was unable to reach the court on-time by reason of traffic issues due to the *Bharat Jodo Yatra* organised by a political party. Counsel submits that the petitioner reached court belatedly, and upon learning of the order that had been passed, immediately moved an application on the same date seeking cancellation of the NBWs issued. Counsel submits however, that the learned ASJ re-notified the application for consideration on the next date, which was 10.01.2023; and thereafter to 17.01.2023.
4. A copy of the application stated to have been filed has been shown to the court. Let it be placed on record.
5. On 17.01.2023 however, the learned ASJ dismissed the application; and remanded the petitioner to judicial custody.
6. It is pointed-out that one of the principal reasons given for not cancelling the NBWs is that on the earlier occasion also NBWs had had to be issued against the petitioner, as referred to above. Counsel submits however, that the earlier NBWs stood cancelled *vide* order dated 27.05.2022, since the learned ASJ had accepted that non-appearance was by reason of omission on the part of the counsel.

7. Counsel supports his submission by judgment dated 24.01.2022 rendered by a Co-ordinate Bench of this court in CrI. MC. No. 176/2022 titled “*Afzal Ahmed vs. State*”, which discusses the aspects which must inform the exercise of the power of the courts to issue NBWs and the grounds on which NBWs should or should not be issued.
8. For the record the petitioner has already been admitted to bail in the present FIR bearing No. 229/2019 dated 14.06.2019 registered at P.S.: Seelampur by a Co-ordinate Bench *vide* order dated 14.09.2020 made in Bail Appln. No. 2261/2020.
9. Upon a *prima-facie* consideration of the averments contained in the petition and the submission made, issue notice.
10. Ms. Meenakshi Dahiya, learned APP appears for the State; accepts notice; and seeks time to file status report.
11. Let status report be filed within 04 weeks, rejoinder thereto, if any, be filed within 02 weeks thereafter; with copy to the opposing counsel.
12. Re-notify on 19.04.2023.
13. Considering the overall circumstances of the case; the fact that the petitioner has been remanded to custody only by reason of NBWs having been issued against him; and that the petitioner states that he had appeared before the learned ASJ and moved an application seeking cancellation of NBWs on the very same day; and also that the essential purpose of NBWs is to secure the presence of a non-compliant party and need not automatically result in a remand order, it is not considered appropriate to keep the petitioner in judicial custody pending final adjudication of the present petition.

14. Accordingly, the petitioner is directed to be released from judicial custody *forthwith* upon receipt of this order.
15. The petitioner will continue to be bound by the conditions imposed *vide* Order dated 14.09.2020 made in Bail Appln No 2261/2020.
16. A copy of this order be communicated by the Registry to the concerned Jail Superintendent *forthwith* for compliance.
17. A copy of this order be given *dasti*.
18. Re-notify on 19th April 2023.

ANUP JAIRAM BHAMBHANI, J

JANUARY 25, 2023

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