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11
06/12/23

HIGH COURT OF DELHI AT NEW DELHI

No. 6717/Crl. Dated 05/12/23

From :

The Registrar General,
Delhi High Court,
New Delhi.

4668/

To:

1. The Ld. Principal District & Sessions Judge, Central Distt., Tis Hazari Courts, Delhi.
2. The Ld. Principal District & Sessions Judge, North Distt., Rohini Courts, Delhi.
3. The Ld. Principal District & Sessions Judge, West Distt., Tis Hazari Courts, Delhi.
4. The Ld. Principal District & Sessions Judge, New Delhi, Patiala House Courts, Delhi:
5. The Ld. Principal District & Sessions Judge, East Distt., Karkardooma Courts, Delhi.
6. The Ld. Principal District & Sessions Judge, North-East Distt., Karkardooma Courts, Delhi.
7. The Ld. Principal District & Sessions Judge, Shahdara Distt., Karkardooma Courts, Delhi.
8. The Ld. Principal District & Sessions Judge, North-West, Distt., Rohini Courts, Delhi.
9. The Ld. Principal District & Sessions Judge, Outer Distt., Rohini Courts, Delhi.
10. The Ld. Principal District & Sessions Judge, South-West Distt., Dwarka Courts, Delhi.
11. The Ld. Principal Distrcit & Sessions Judge, South Distt., Saket Courts, Delhi.
12. The Ld. Principal District & Sessions Judge, South-East Distt., Saket Courts, Delhi.
13. The Ld. Principal Distrcit & Sessions Judge, CBI Distt., Rouse Avenue Courts, Delhi.
14. Shri. Manoj Kumar, ASJ-01, North-East District, KKD Courts, Delhi "Or" Successor Courts.
15. The SHO/IO. Police Station: Seelampur, Delhi.

CRL.M.C. 527/2023

FAHIM .....**Petitioner/s**

V/s

STATE .....**Respondent/s**

Petition under section 482 of the code of Cr.P.C, 1973 for quashing/ setting aside the impugned order dated 03.01.2023 passed by the Ld. Trial Court whereby the Ld. Trial Court had issued the non bailable warrant against the petitioner and had further dismissed the application for cancellation of NBW'S issued against the petitioner vide order dated 17.01.2023 and had taken him into the custody, and for directing the Jail Authority to release the petitioner forthwith in respect of the FIR No. 229/2019 registered on 14.06.2019 at P.S. Seelampur, U/s 376 of IPC.

Sir/Madam,

I am directed to forward herewith for immediate compliance/necessary action a copy of judgment/order dated **21.11.2023** passed in the above case by **Hon'ble Mr. Justice Amit Bansal,** of this Court.

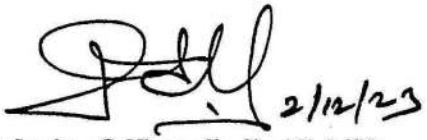
PD 28 J(CS)
06/12/2023

O/C/Genl/C
(Be circulated)

The Hon'ble Court has directed that a copy of this order be circulated to all the Trial Courts trying criminal cases.

Other necessary directions are contained in the enclosed copy of order.

Yours faithfully



Encl : Copy of order dated **: 21.11.2023**
and Memo of Parties.

Admin. Officer Judl. (Crl-II)
For Registrar General

IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl. Misc Case No. _____ of 2023

The present petition arise out of FIR No. 229/2019 registered on 14.06.2019 at PS Seelampur under Section 376 of Indian Penal Code, 1860 and Section 4 of POCSO Act, 2012

IN THE MATTER OF:-

Fahim ...Petitioner

Versus

State

Govt. of NCT of Delhi ...Respondent

MEMO OF PARTIES

Fahim

S/o. Sh. Munne Khan

R/o. A-132, A-Block

New Seelampur, Bhajan Pura

North East Delhi-110053 ...Petitioner

Versus

State

Govt. of NCT of Delhi

Through SHO

PS Seelampur ...Respondent

(ADITYA AGGARWAL & ANKIT MUTREJA)
ADVOCATE
EN.ROLL.NO. D/982/06 & D/2123/16
15, Basement, Birbal Road, Jangpura Extn., Delhi-110014
M: 9891789459 & 9990206703
E-Mail ID: adv.ankitmutreja@gmail.com

Place: Delhi

Date:20.01.2023

2023:DHC:8473

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

Date of decision: 21st November, 2023

\+ **CRL.M.C. 527/2023**

FAHIM ..... Petitioner

Through: Mr.Aditya Aggarwal, Mr.Naveen Panwar and Mr.Jayseeka Virdi, Advocates.

versus

STATE ..... Respondent

Through: Mr.Shoaib Haider, APP for State with SI Rahul, PS. Seelampur.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure 1973 (CrPC), seeking setting-aside of the order dated 3rd January, 2023, whereby the learned ASJ was pleased to issue Non-Bailable Warrants (NBWs) for the production of the petitioner and the order dated 17th January, 2023, whereby the learned ASJ rejected the application of the petitioner for cancellation of the NBWs and thereby remanded him to judicial custody.

2. *Vide* the order dated 25th January, 2023, passed by the predecessor Bench, the petitioner was ordered to be released from judicial custody. The petitioner had already been granted bail by this Court *vide* order dated 14th

September 2020 passed in BAIL APPLN. 2261/2020.

3. I have heard counsels for the parties and perused the material on record.

4. Rule 3, Part C (i), Volume III, Chapter 1 of the Delhi High Court Rules states that issuance of warrants interferes with the personal liberty of a person and the Magistrate should take care that no greater hardship than is necessary is caused to the person concerned.

5. A Co-ordinate Bench of this Court in ***Afzal Ahmad* v. *State***, 2022 SCC OnLine Del 256, has observed that the Trial Court should not have issued NBWs against the petitioner on account of non-appearance of the petitioner in the early hours of the day.

6. Another Co-ordinate Bench of this Court in ***Naresh Kumar* v. *State***, (2006) 131 DLT 678, held that the Trial Courts should not take an extreme step of issuing NBWs during the first call and in the pre-lunch hours of the day.

7. This Court is in full agreement with the aforesaid views taken by the Co-ordinate Benches. On a lot of occasions due to variety of reasons, including the traffic situation in the city, various parties are unable to reach the Court when the matter is called for the first time, but reach later.

8. It is to be noted that in the present case, the petitioner did appear before the Trial Court on 3rd January, 2023 when the matter was listed, however, the petitioner reached the Trial Court after the matter had already been called. As per the petitioner, he reached late due to heavy traffic because of a political rally. An application for cancellation of the NBWs was moved on behalf of the petitioner immediately on the same date. However,

the said application was dismissed by the Trial Court *vide* order dated 17th January, 2023.

9. In my considered view, there was no justification for the Trial Court to issue an NBW on account of non-appearance of the petitioner on 3rd January, 2023 in the early hours of day. Further, keeping in mind that the application for cancellation of the NBW was filed on the same date along with an explanation for non-appearance, the same should have been considered immediately by the Trial Court. The reasons given by the Trial Court in the order dated 17th January, 2023 dismissing the application for cancellation of the NBW are wholly unsustainable. Accordingly, both the impugned orders dated 3rd January, 2023 and 17th January, 2023 are set aside.

10. The present case highlights a growing trend of the Trial Courts going against the judgments of this Court as well as the Rules established and dismissing genuine reasons of non-appearance of the parties and issuing warrants against them.

11. The legal position in issuance of warrants is abundantly clear, however, the same is not being followed by the Trial Courts, thus, there need to be certain guidelines put in place for securing appearance of parties before the Trial Courts in accordance with law.

12. In view of the above, for the guidance of the Trial Courts in similar cases, following directions are issued :-

i. The Trial Courts should not issue NBWs against a person on first call in the pre-lunch hours of the Court, except when there are genuine apprehensions that the person would abscond if not taken into

custody. Such coercive steps should be taken only post 12:30 PM.

ii. In situations where warrants, either bailable or non-bailable, are issued and the person appears before the Court during the course of the Court hours, the Courts should assess if the reason of non-appearance of the person was reasonable and if warranted, costs may be imposed.

iii. If the person is present through his authorized Advocate, warrants for appearance of the person should be issued only in exceptional circumstances, with reasons for the same being recorded in writing, especially where an application seeking exemption from personal appearance has been filed on behalf of the person.

iv. If an application for cancellation of NBWs due to non-appearance of the parties is filed shortly after the issuance of NBWs, the Trial Court should expeditiously consider the said application.

13. A copy of this order be forwarded to all the Principal District and Sessions Judges in Delhi for circulation to all the Trial Courts trying criminal cases.

[redacted]

AMIT BANSAL, J

NOVEMBER 21, 2023
sr

T/C

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE,
WEST DISTRICT, TIS HAZARI COURTS, DELHI

No 4292342967/Genl./West/THC/2023 Dated 07/12/23

Sub: Regarding Judgment dated 21.11.2023 passed by Hon'ble Mr. Justice Amit Bansal, High Court of Delhi, New Delhi in Case Bearing CRL.M.C. No. 527/2023 Title as Fahim Vs. State.

Forwarded photocopy of Letter No. 66716/Crl. Dated 05.12.2023 received from Admin. Officer Judl. (Crl-II), Hon'ble High Court of Delhi, New Delhi vide Diary No. 4668 Dated 05.12.2023 along with copy of Judgment dated 21.11.2023 passed by Hon'ble Mr. Justice Amit Bansal, High Court of Delhi, New Delhi & Memo of Parties in Case Bearing CRL.M.C. No. 527/2023 Title as Fahim Vs. State for information and compliance/necessary action as directed to:-

1. Reader to the Ld. Principal District & Sessions Judge, West District, Tis Hazari Courts, Delhi.
2. All the Ld. Judicial Officers of West District dealing with Criminal Cases, Tis Hazari Courts, Delhi.
3. R&I Branch, West District, Tis Hazari Courts, Delhi for uploading the same on LAYERS.
4. The Website Committee, Tis Hazari Courts, Delhi with the reqeust to upload the same on Centralized Website through LAYERS.

7/12/23

(VIJAY SHANKAR)
Officer Incharge General Branch,
West District, Tis Hazari Courts, Delhi

Enclosure:- As above.