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

% Judgment delivered on: 31.08.2023

+ **CRL.A. 705/2023**

DHIRAN RAI

..... Appellant

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Harish Chandra, Advocate
alongwith appellant

For the Respondent: Mr. Shoaib Haider, APP for State with
PSI Nishita Pundir, P.S. Bhajanpura

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CRL.M.A. 23486/2023

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

CRL.A. 705/2023 & CRL.M.A. 23485/2023 (Stay)

3. This is a criminal appeal under Section 449(2) read with Section 482 Cr.P.C., 1973 assailing the order dated 17.08.2023 passed by



learned ASJ, District North East, Karkardooma Courts, Delhi in case titled *State vs. Akash & Ors*, bearing FIR No. 229/2022 under Sections 308/326/323/506/34 IPC, 1860 registered at Police Station Bhajanpura, whereby the surety bond of the appellant, who stood as a surety for the co-accused Raja, was forfeited and simultaneously a warrant of attachment against surety amount of Rs.25,000/- was also issued.

4. Issue notice.

5. Notice accepted by Mr. Shoaib Haider, learned APP for State.

6. Learned counsel for the appellant submits that the appellant before this Court had stood surety for the accused in the aforesaid FIR namely one Raja, for a surety amount of Rs.25,000/-.

7. The appellant had furnished his surety bond of Rs.25,000/- and placed on record the documents of his Scooty Activa bearing registration no. DL-8S-BX-9417 in support of his surety bond.

8. Learned counsel for the appellant submits that from time to time, the co-accused Raja was appearing in respect of the case before the learned Sessions Court in respect of the aforesaid FIR.

9. It is stated that on 04.08.2023, the accused Raja did not appear in the said case and the learned Trial Court had issued Bailable Warrants against the said accused and simultaneously also issued a notice under Section 446 Cr.P.C., 1973 to the appellant to show cause as to why the bail bond should not be forfeited.

10. It is submitted that when the appellant received the said notice under Section 446 Cr.P.C., 1973, he attempted to contact the accused on the mobile number of the mother of the accused. The accused had informed him that he had gone to his native village in West Bengal with



his mother and sister and his mother became seriously ill due to Tumor in her abdomen. For that reason, the accused was unable to come back and appear before the Court.

11. In accordance with the notice of the learned Trial Court, the appellant appeared before the learned Trial Court on 17.08.2023 and had informed the aforesaid reason. That apart, on the query by the learned Trial Court, the appellant also furnished the detailed address of the accused Raja at West Bengal.

12. Despite cooperating with the learned Trial Court on furnishing the address of the accused, learned Trial Court, without considering any of the aforesaid submissions or reasons, passed the impugned order dated 17.08.2023, forfeiting the surety bond and also directed that the warrants of attachment be issued and the penalty amount of Rs.25,000/-, as mentioned in the surety bond, be recovered from the surety after selling the aforesaid vehicle.

13. Keeping in view the fact that the appellant had given sufficient information to the learned Trial Court as also the detailed address mentioned in the impugned order itself alongwith the mobile number, there is no reason as to why the learned Trial Court could not have recalled the notice under Section 446 Cr.P.C., 1973 and had proceeded to take harsh steps against the appellant.

14. Keeping in view the fact that the appellant had cooperated and had given complete particulars of the accused Raja, learned Trial Court ought not to have taken such harsh steps as of now.

15. Therefore, the impugned order dated 17.08.2023 *qua* the appellant alone and the directions against the said appellant shall stand quashed.



16. So far as the directions issued in respect of the accused Raja is concerned, the impugned order shall remain untouched.

17. With the aforesaid directions, the appeal alongwith pending application stands disposed of.

TUSHAR RAO GEDELA, J.

AUGUST 31, 2023

Aj