

Neutral Citation No. - 2024:AHG-LKO:59199

A.F.R.

Court No. - 13

Case :- APPLICATION U/S 482 No. - 7515 of 2024

Applicant :- Navneet Bhadauria

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko And Another

Counsel for Applicant :- Anuuj Taandon, Purnendu Chakravarty

Counsel for Opposite Party :- G.A., Digvijay Nath Dubey

Hon'ble Saurabh Lavania, J.

1. Heard Shri Purnendu Chakravarty, learned counsel for the applicant, Shri S. P. Tiwari, learned A.G.A. for the State of U.P. and Shri Digvijay Nath Dubey, learned counsel for the opposite party no. 2 and perused the record.

2. Before proceeding, it would be apt to rectify that in the order dated 28.08.2024 inadvertently name of "Shri Pradeep Kumar Shukla, Advocate" has been indicated as counsel for opposite party no. 2, which is rectified and same would read as "Shri Digvijay Nath Dubey, Advocate".

3. The present application has been filed by the applicant namely Navneet Bhadauria seeking following main relief:

"to allow the present Application filed under section 528 Bhartiya Nagrik Suraksha Sanhita 2024 (BNSS) corresponding to Section 482 Cr.P.C exercising the inherent powers to give effect to the provisions of the Code and quash the impugned order dated 21/8/2024 passed by Learned Court of ACJM I Court No. 25 Lucknow and direct and permit applicant so as to furnish the bonds under section 88 Cr.P.C to the satisfaction of the Learned Trial Court in FIR No. 0363/2021 Case No. 80697/2022 U/s 323,504,506,420,467,468,471 IPC PS Vibhuti Khand Lucknow in the interest of justice."

4. Brief facts of the case, which are relevant for the purposes of disposal of the application under consideration, are as under:

(i) An FIR was lodged as Case Crime No. 363 of 2021 under Sections 147, 323, 504, 506, 406, 420 at Police Station - Vibhuti Khand District - Lucknow by opposite party no.2/Deepak Sharma against Anand Kumar Singh @ Baba Trikaldarshi, Rajeev Lochal Paliwal, Navneet Bhadauria (applicant herein), Vijay Pal Prapati and one unknown.

(ii) After the aforesaid, the investigation was carried out and upon completion of investigation, the Investigating Officer (in short "I.O.") submitted the charge-sheet dated 01.06.2022 under Sections 323, 504, 506, 406, 420, 467, 468, 471 which was submitted before the Court concerned on 19.07.2022.

(iii) Thereafter, the Court concerned took cognizance upon the charge-sheet on 19.07.2022 and summons were issued to the accused indicated in the charge-sheet named above.

(iv) It appears that in pursuance to the summons, the applicant did not appear before the Court.

(v) Thereafter, the Bailable Warrant was issued on 10.10.2022 and despite the order related to issuance of the Bailable Warrant, the applicant did not appear before the trial Court and ultimately on 15.10.2022, the trial Court issued the Non-Bailable Warrant.

(vi) For the purposes of interference in the pending criminal proceedings, the applicant approached this Court by means of **APPLICATION U/S 482 No. 6754 of 2022**. This Court, after considering the facts and circumstances of the case vide order dated 26.09.2022, declined to interfere in the pending criminal proceedings and disposed of the said application preferred by the applicant/Navneet Bhadauria

under Section 482 Code of Criminal Procedure (in short "Cr.P.C.") with liberty to the applicant to prefer an application seeking anticipatory bail or regular bail. The relevant portion of order dated 26.09.2022 reads as under:

"In view of the aforesaid case law, this Court has adverted to the entire record of the case.

The submissions made by the applicant's learned counsel call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. Therefore, I do not find any justification to quash the proceedings against the applicants as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

Accordingly, the prayer for quashing the same is refused as I do not see any illegality, impropriety and incorrectness in the proceedings under challenge. There is no abuse of court's process either.

However, it is provided that if the applicant appears before the court below and applies for grant of anticipatory bail / bail, the court below shall consider and decide the same expeditiously on the basis of material available before it in accordance with law having regard to the fact that whether the offences under Sections 406, 420, 467, 468, 471 I.P.C. are made out against the present applicant in the facts of this case and on the basis of material collected during investigation.

With the aforesaid observations, the instant application is finally disposed of."

(vii) Prior to issuance of Bailable Warrant and Non- Bailable Warrant, as stated, the applicant preferred an anticipatory bail application under Section 438 Cr.P.C. before this Court registered as **CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. 1841 of 2022**. This Court, after considering the facts and circumstances of the case including the interim protection granted by Division Bench of this Court vide order dated 10.08.2021 passed in **Misc. Bench No. 17201 of 2021 (Rajeev Lochan Paliwal & Anr. Vs. State of U.P.)**, allowed the anticipatory bail application preferred by the applicant/Navneet Bhaduria vide order dated 18.11.2022. The relevant portion of the order dated 18.11.2022 reads as under:

"8. Having heard the learned counsel for the parties, I find that as per prosecution case, first time co-accused Anand Kumar Singh @ Baba Trikaldarshi with dishonest intention by luring the complainant insisted him to invest money in mining business in U.P. and thereafter, he introduced the complainant to Vijay Pal Prajapati (Proprietor of "M/s V.P. Construction"), who was also in his collusion. Subsequently, on their inducement and assurance, complainant believing their words as true, invested money in question in good faith in the mining business along with M/s V.P. Construction. Applicant is neither partner of Vijay Pal Prajapati nor investor in the mining business in question. There is no business deal between the complainant and present applicant-Navneet Singh Bhaduria and he is also not party in the aforesaid agreements dated 05.12.2020. The applicant is not liable to return any amount in question to the complainant. The applicant has no criminal antecedent to his credit. Learned A.G.A. as well as learned counsel for the complainant could not point out any material on record to establish the specific act of forgery or fabrication of any document on the part of present applicant-Navneet Singh Bhaduria. Tender was also not allotted to the applicant. This Court is of the view that in order to constitute the offence under Section 420 I.P.C., there must be element of deception and a person is said to deceive another by "Suggestio falsi" (suggesting false) or "Supressio very"

(suppressing the truth) or both intentionally induces another to believe a thing to be true which he knows to be false or does not believe to be true. Under the facts of this case, I find that the co-accused Anand Kumar Singh @ Baba Trikaldarshi and Vijay Pal Prajapati (Proprietor of M/s V.P. Construction) are the main culprit in this case and the case of the present applicant Navneet Singh Bhadauria is distinguishable from them and stands on better footing than that of co-accused Rajeev Lochan Paliwal, who has been granted anticipatory bail by the co-ordinate Bench as noted above. The incident which is alleged to have taken place on 09.03.2021 as alleged in F.I.R. is a disputed question of fact and can be seen by the trial Court. I also find that non-bailable warrant dated 15.10.2022 was issued during pendency of anticipatory bail application of the applicant before the concerned Court below, which was filed in compliance of above order dated 26.09.2022. So far as judgments relied upon by the counsel for the complainant is concerned, this Court is of the view that the same is distinguishable on the facts of this case. It is well settled that every case turns on its own facts. Even one additional or different fact may make a big difference between the conclusion in two cases, because even a single significant detail may alter the entire aspect.

9. In view of the above analysis of the case, looking to the overall facts and circumstances of the case, submissions of learned counsel for the parties, reasonable apprehension of arrest of the applicant, taking into consideration the gravity of offence in the light of nature of accusation so far as against the present applicant is concerned which is distinguishable from the case of Anand Kumar Singh @ Baba Trikaldarshi and Vijay Pal Prajapati and there being no possibility of his fleeing from justice as well as reasons noted above, this Court is of the view that prima facie the applicant has made out a case for granting anticipatory bail during trial."

(viii) After the aforesaid, an application seeking cancellation of bail registered as **CRIMINAL MISC. BAIL CANCELLATION APPLICATION No. -37 of 2024** was preferred by Deepak Sharma. This Court took note of the fact indicated in the said application as also the

submissions advanced by learned counsel for the applicant (opposite party no. 2 herein) and thereafter vide order dated 05.07.2024, the application seeking cancellation of bail was allowed. The order dated 05.07.2024 reads as under:

"Heard Mr. Digvijay Nath Dubey, learned counsel for the applicant, Mr. Virendra, learned A.G.A. representing the State and Mr. Chandan Srivastava, learned counsel for opposite party no. 2 through video conferencing.

The instant application has been moved by the applicant - Deepak Sharma with a prayer to cancel the anticipatory bail granted vide order of this Court dated 18.11.2022 to opposite party no. 2-Navneet Bhadauria mainly on the ground of violation of condition no.1 of anticipatory bail order dated 18.11.2022, which reads as under :

"(i) That the applicant shall cooperate in the expeditious disposal of the trial and shall regularly attend the court on each dates unless inevitable.

(ii) xxxx

(iii) xxxx

(iv) xxxx"

The only submission of Mr. Digvijay Nath Dubey, learned counsel for the applicant is that opposite party no. 2 is not cooperating with expeditious disposal of trial. Referring the order-sheet of the trial Court, he submits that on 16.06.2023, 28.06.2023, 27.07.2023, 10.08.2023, 21.08.2023, 17.11.2023, 18.01.2024 and 29.01.2024, opposite party no. 2 did not personally appear before the trial Court and moved exemption applications through his counsel in a casual manner.

On the other hand, learned counsel for opposite party no. 2 does not dispute the said fact of moving exemption applications, however, he submits that opposite party no. 2 was appearing before the trial Court on the aforesaid dates through his counsel,

therefore, it cannot be said that he is not cooperating with expeditious disposal of trial.

Having heard submission of learned counsel for the parties and perusing the record, I find that it is not in dispute that on several dates as noted above, opposite party no. 2 did not appear in person and moved applications through his counsel for exemption of his appearance. Record also shows that case is running at a slow pace on account of delaying tactics adopted by accused persons by adopting different modus operandi. Opposite party no. 2 despite granting time vide order dated 17.05.2024 did not file counter affidavit. This Court is also of the view that despite granting anticipatory bail to opposite party no. 2, his non-appearance in person before the trial Court and frequently moving exemption applications on the dates fixed amount to his non-cooperation with the expeditious disposal of the trial.

In view of the above, order dated 18.11.2022 granting anticipatory bail to opposite party no. 2-Navneet Bhadauria is hereby cancelled. Opposite party no. 2 is directed to surrender before the trial Court forthwith.

Accordingly, instant anticipatory bail cancellation application succeeds and is allowed.

This order be communicated to the concerned trial Court for information."

(ix) Being aggrieved by the order dated 05.07.2024, quoted above, the applicant approached the Hon'ble Apex Court by preferring **Special Leave to Appeal (Crl.) No. 9752 of 2024**. This appeal was taken up on 29.07.2024 and the Hon'ble Apex Court, after due consideration, dismissed the appeal. The order dated 29.07.2024 dismissing the appeal filed by the applicant challenging the order dated 05.07.2024, whereby the application seeking cancellation of bail filed by Deepak Sharma (opposite party no.2 herein) was allowed, reads as under:

"Having heard learned counsel for the petitioner, we are not inclined to interfere with the impugned judgment and order.

The special leave petition is, accordingly, dismissed.

Pending application(s), if any, shall also stand disposed of."

(x) After dismissal of the special leave to appeal by the Hon'ble Apex Court vide order dated 29.07.2024, whereby the order cancelling the anticipatory bail was affirmed, the applicant approached the trial Court by preferring application(s) under Section 88 Cr.P.C. (Section 91 Bhartiya Nagrik Suraksha Sanhita, 2023 (in short "BNSS") and Section 70 Cr.P.C. (Section 72 BNSS) with a prayer to accept the bond. Both these applications have been rejected by the order under challenge dated 21.08.2024.

(xi) The aforesaid application(s), as stated, were preferred in the light of judgment passed by the Hon'ble Apex Court in the case of **Tarsem Lal Vs. Directorate of Enforcement Jalandhar Zonal Office** reported in **(2024) 7 SCC 61**. The relevant portion of the judgment passed in the case of Tarsem Lal (Supra):

"33. Now, we summarise our conclusions as under:

***33.1.** Once a complaint under Section 44(1)(b) PMLA is filed, it will be governed by Sections 200 to 205 Cr.P.C. as none of the said provisions are inconsistent with any of the provisions of PMLA;*

***33.2.** If the accused was not arrested by ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued;*

***33.3.** After a summons is issued under Section 204 Cr.P.C. on taking cognizance of the offence punishable under Section 4*

PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88Cr.P.C.;

33.4. *In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205Cr.P.C.;*

33.5. *If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70Cr.P.C.. Initially, the Special Court should issue aailable warrant. If it is not possible to effect service of theailable warrant, then the recourse can be taken to issue a non-ailable warrant;*

33.6. *A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the court on the date fixed. Thus, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail;*

33.7. *In a case where the accused has furnished bonds under Section 88Cr.P.C., if he fails to appear on subsequent dates, the Special Court has the powers under Section 89 read with Section 70Cr.P.C. to issue a warrant directing that the accused shall be arrested and produced before the Special Court; if such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court to appear before the said court on all the dates fixed by it. While cancelling the warrant, the court can always take an undertaking from the accused to appear before the court on every date unless appearance is specifically exempted. When ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is*

furnished by the accused to appear regularly before the court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application;

33.8. *When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88Cr.P.C. in a given case. However, it is not mandatory in every case to direct furnishing of bonds. However, if a warrant of arrest has been issued on account of non-appearance or proceedings under Section 82 and/or Section 83Cr.P.C. have been issued against an accused, he cannot be let off by taking a bond under Section 88Cr.P.C., and the accused will have to apply for cancellation of the warrant;*

33.9. *After cognizance is taken of the offence punishable under Section 4 PMLA based on a complaint under Section 44(1)(b), ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and*

33.10. *If ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled."*

5. In the aforesaid background of the case, the present application has been filed seeking main relief, quoted above.

6. Impeaching the order dated 21.08.2024 as also seeking relief in terms of Section 88 Cr.P.C., learned counsel for the applicant states that the case of the applicant is squarely covered by the judgement passed in the case of **Tarsem Lal (Supra)**. The trial Court by not granting the relief as per the observation made in this judgment erred in fact and law both.

7. It is also stated that the trial Court by means of the impugned order rejected the application under Section 70 Cr.P.C. (Section 72 BNSS) and has not decided the application under Section 88 Cr.P.C. (Section 91 BNSS).

8. In support of his submissions aforesaid, reliance has been placed on para 33 of the judgment passed in the case of **Tarsem Lal (Supra)**, quoted above.

9. Shri S. P. Tiwari, learned A.G.A. for the State of U.P. and Shri Digvijay Nath Dubey, learned counsel for the opposite party no. 2 opposed the prayer sought by the applicant. The submissions advanced by the side opposite are as under:

(i) The applicant, in the facts and circumstances of the case, is not entitled to the benefit of the judgment passed in the case of **Tarsem Lal (Supra)**.

(ii) The applicant, in fact, is avoiding the proceedings pending before the trial Court.

(iii) The applicant was summoned by the trial Court but the applicant avoided the proceedings, therefore, the Bailable Warrant was issued on 10.10.2022 and despite this, the applicant failed to take benefit of various pronouncements including the pronouncement passed

in **Satender Kumar Antil versus Central Bureau of Investigation and another, (2022) 10 S.C.R. 351 : (2022) 10 SCC 51** and therefore, under compelling circumstances after so many dates, the trial Court issued the Non -Bailable Warrant on 15.10.2022.

(iv) The applicant also approached this Court by by means of **APPLICATION U/S 482 No. 6754 of 2022**, which was disposed of vide order dated 26.09.2022 and no protection was granted to the applicant.

(v) The applicant thereafter preferred an anticipatory bail application under Section 438 Cr.P.C. before this Court registered as **CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1841 of 2022** which was allowed vide order dated 18.11.2022 and subsequently, the anticipatory bail application was cancelled vide order dated 05.07.2024 affirmed by the Hon'ble Apex Court vide order dated 29.07.2024.

(vi) In terms of order dated 05.07.2024 passed by this Court, whereby the bail of the applicant was cancelled, the applicant was/in under obligation to surrender/submit himself to the Court's jurisdiction, direction or control.

(vii) In the instant case, after the order dated 05.07.2024, the applicant failed to appear before the Court concerned and thereafter on account of non appearance of the applicant, in compliance of order dated 22.07.2024 passed by the trial Court the Non-Bailable Warrant was issued and taking note of all the relevant facts as also the conduct of the applicant, the trial Court passed the order dated 21.08.2024, whereby rejected both the applications preferred by the applicant.

(viii) It is not mandatory for the trial Court to enlarge the applicant on bail in terms of Section 88 Cr.P.C..

(ix) In the **Tarsem Lal (Supra)** the summons were issued and thereafter on account on non-appearance the warrants were issued and thereafter, the application seeking anticipatory bail before the Special Court was rejected and thereafter the High Court also rejected the prayer seeking anticipatory bail and thereafter, the appellant approached the Hon'ble Apex Court and the interim protection was granted by the Hon'ble Apex Court and subsequently, the Hon'ble Apex Court concluded in para 33, quoted above, referred by learned counsel for the applicant.

(x) In the instant case, from the record it is apparent that after order of granting bail dated 18.11.2022, the applicant did not appear on 16.06.2023, 28.06.2023, 27.07.2023, 10.08.2023, 21.08.2023, 17.11.2023, 18.01.2024 and 29.01.2024 and taking note of the conduct of the applicant, this Court cancelled the anticipatory bail application and it appears that conduct of the applicant was also considered by the Hon'ble Apex Court and therefore the special leave to appeal preferred by the applicant was dismissed vide order dated 29.07.2024 without granting the benefit of the judgment passed in the case of **Tarsem Lal (Supra)**.

10. In view of above facts, the benefits of the principles settled in the case of **Tarsem Lal (Supra)** would not be available to the applicant.

11. In response, learned counsel for the applicant states that after the order dated 18.11.2022, the bail bond was accepted on 20.01.2023 and after production of order of this Court dated 05.07.2024 on

23.07.2024, the trial Court, on 22.07.2024, directed the Office to proceed in terms of the earlier order and in compliance thereof, Non Bailable Warrant was issued.

12. It would be apt to indicate that at this stage that from the aforesaid it is apparent that Non-Bailable Warrant was issued before preferring the application(s), which have been rejected by the impugned order dated 21.08.2024.

13. Considered the aforesaid and perused the records.

14. Upon due consideration of the facts of the present case, this Court is of the view that no interfere is required in the composite order dated 21.08.2024, impugned herein, whereby two application(s) i.e. application under Section 70 Cr.P.C./Section 72 BNSS and application under Section 88 Cr.P.C./Section 91 BNSS have been rejected. It is for the following reasons:

(i) The order dated 21.08.2024 is in two parts, as it decides two applications, referred above.

(ii) This Court feels it appropriate to first consider the second part of the order dated 21.08.2024, which relates to the application under Section 88 Cr.P.C./Section 91 BNSS. The same reads as under:

"जहां तक प्रार्थी/अभियुक्त नवनीत भदौरिया द्वारा प्रस्तुत प्रार्थनापत्र अंतर्गत धारा 88 दं.प्र.सं. का प्रश्न है, अभियुक्त नवनीत भदौरिया का उक्त प्रार्थनापत्र अभियुक्त की व्यक्तिगत अनुपस्थिति, उसके विरुद्ध जारी एन.बी.डब्लू, तथा माननीय उच्च न्यायालय के आदेश दिनांकित 05.07.2024 के आलोक में स्वीकार होने योग्य नहीं है"

(iii) From the above extracted part of the order dated 21.08.2024, it is apparent that the Trial Court rejected the application of the application preferred under Section 88 Cr.P.C./ Section 91 BNSS on the

ground that the applicant was not present before the Trial Court and also that the applicant did not surrender himself to the jurisdiction of the concerned court in terms of order dated 05.07.2024 of this Court, affirmed by the Hon'ble Apex Court vide order dated 29.07.2024.

(iv) For seeking benefit of Section 88 Cr.P.C./ Section 91 BNSS, the concerned has to appear/ surrender before the concerned court and the same is evident from said provisions. The same are as under:-

“Section 88 Cr.P.C.

Power to take bond for appearance - When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial.”

“Section 91 BNSS

Power to take bond or bail bond for appearance - When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond or bail bond for his appearance in such Court, or any other Court to which the case may be transferred for trial.”

(v) Section 88 Cr.P.C. was also considered by a Division Bench of this Court and upon due consideration, the Division Bench of this Court at Allahabad in the case of **Babu Lal and Others Vs. Smt Momina Begum** passed in **Criminal Misc. Application No. 8810 of 1989** on **23.03.2006**, observed as under :-

“Now coming to the question as to whether the cases where section 88 is applicable, can the Officer presiding a Court may require a person to execute bond, who is not present in the

*Court can be answered, by a simple reading of Section 88 which clearly mention the word " is present in such Court". In order to apply Section 88 Cr.P.C., therefore, presence of a person is necessary before the Court. The purpose of asking him to execute bond with or without surety is to ensure his presence/appearance in such Court or any other Court to which the cases may be transferred for trial. In the absence of such person even Section 88 Cr.P.C. would have no application. This view has been taken by an Hon'ble Single Judge of this Court in **Mukesh Kumar Versus State of U.P. and others, 2000 Cr.L.J.1694** and after referring to the observations made in para-10 of the judgment in **Vishwa Nath Jiloka and others Versus Munsif Lower Criminal Court, Bahraich and others, reported in 1989 AWC 1235** the Hon'ble Single Judge has taken a view that the aforesaid observation does not lay down that the bail application should be disposed of without appearance of the accused in person. The provisions of Section 88 Cr.P.C. also requires taking of the bonds, if a person is present in the Court and, therefore, no order for taking of the bonds can be passed, unless the accused appears in person. We agree with the aforesaid view."*

(vi) Para 33 of the judgment passed by the Hon'ble Apex Court in the case of **Tarsem Lal (Supra)**, which includes Sub-Para 33.3, 33.5, 33.7 and 33.8 also indicates that for seeking benefit under Section 88 Cr.P.C./ Section 91 BNSS, the accused has to appear in person before the concerned court.

(vii) The benefit of Section 88 Cr.P.C./ Section 91 BNSS would only be available if the accused on his/her own volition appears before the court concerned, and in the instant case the benefit of Section 88 Cr.P.C./ Section 91 BNSS would not be available to the applicant as prior to moving the application in the said provision(s) the Non-Bailable Warrant was issued for the purposes of appearance of the applicant. In this regard reference can be made to Para 33.8 of the

judgment passed by the Hon'ble Apex Court in the case of **Tarsem Lal (Supra)**. It would be apt to indicate here that on account of non-appearance before the court in terms of order dated 25.07.2024, an order was passed on 22.07.2024 and in compliance thereof, the Non-Bailable Warrant was issued, fixing 07.08.2024 and prior to the same, the applications, in issue, i.e. Application under Section 70 Cr.P.C./ Section 72 BNSS and Application under Section 88 Cr.P.C./ Section 91 BNSS, were not preferred by the applicant.

(viii) In view of the aforesaid, the Trial Court, in the instant case, has not committed any error in rejecting the application of the applicant under Section 88 Cr.P.C./ Section 91 BNSS as the applicant was not present in person before the court concerned.

(ix) Non-compliance of the order dated 05.07.2024, affirmed by the Hon'ble Apex Court vide order dated 29.07.2024, is apparent from the record.

(x) The applicant without submitting/surrendering himself to the jurisdiction of the court, preferred an application for recall of the Non-Bailable Warrant under Section 70 Cr.P.C./ Section 72 BNSS.

(xi) Now coming to the first part of the order impugned. First part of the impugned order dated 21.08.2024 deals with the rejection of the application preferred by the applicant under Section 70 Cr.P.C./ Section 72 BNSS. For ready reference, the relevant portion of the order dated 21.08.2024 is extracted hereunder:-

"पत्रावली के अवलोकन से विदित है कि यह पत्रावली माननीय मुख्य न्यायिक मजिस्ट्रेट महोदय के आदेश दिनांकित 31.07.2024 के अनुक्रम हस्तांतरित होकर इस न्यायालय में प्राप्त हुई। पत्रावली के अवलोकन पर यह पाया गया कि अभियुक्त नवनीत भदौरिया को प्रस्तुत प्रकरण में माननीय उच्च न्यायालय से दिनांक 18.11.2022 को अधिन जमानत प्रदान की गयी थी, जिसके उपरान्त माननीय उच्च न्यायालय द्वारा अपने

आदेश दिनांकित 05.07.2024 द्वारा अभियुक्त नवनीत भदौरिया को अग्रिम जमानत, उसके न्यायालय में व्यक्तिगत रूप से उपस्थित न होने तथा प्रायः जरिए अधिवक्ता हाजिरीमाफी प्रस्तुत करने तथा विचारण में सहयोग न करने तथा विचारण को विलंबित करने का प्रयास करने के आधार पर निरस्त करते हुए अभियुक्त को अविलंब विचारण न्यायालय के समक्ष आत्मसमर्पण करने हेतु आदेशित किया गया। तदोपरांत अभियुक्त उपरोक्त द्वारा माननीय उच्चतम न्यायालय में उक्त आदेश के विरुद्ध एक SLP दाखिल की गयी, जिसे माननीय उच्चतम न्यायालय द्वारा अपने आदेश दिनांकित 29.07.2024 द्वारा निरस्त कर दिया गया। माननीय उच्च न्यायालय के आदेश के उपरांत भी जब अभियुक्त द्वारा इस न्यायालय में आत्मसमर्पण नहीं किया गया, तब पूर्व पीठासीन अधिकारी द्वारा दिनांक 22.07.2024 को पत्रावली पर यह अंकन करते हुए कि अभियुक्त नवनीत भदौरिया के विरुद्ध पूर्व आदेशानुसार यथोचित आदेशिका जारी हो, अभियुक्त नवनीत भदौरिया के विरुद्ध एन.बी.डब्लू. जारी कर दिया तथा दिनांक 17.08.2024 की तिथि पत्रावली में नियत कर दी गयी। न्यायालय के आदेश दिनांकित 22.07.2024 के उपरांत अभियुक्त नवनीत भदौरिया द्वारा न्यायालय में आत्मसमर्पण न करते हुए प्रार्थनापत्र अंतर्गत धारा 70 (2) दं.प्र.सं. प्रस्तुत करते हुए यह आपत्ति की है कि पूर्व पीठासीन अधिकारी द्वारा अपने आदेश दिनांकित 22.07.2024 में शब्द पूर्व आदेशानुसार प्रयोग किया है, जो कि तकनीकी रूप से गलत है। यदि अभियुक्त नवनीत भदौरिया की ओर से की गयी आपत्ति को सही भी मान लिया जाए तो भी यह ध्यान देने योग्य है कि पूर्व पीठासीन अधिकारी द्वारा अपने आदेश दिनांकित 22.07.2024 में स्पष्ट रूप से यह अंकन करते हुए कि माननीय उच्च न्यायालय द्वारा अभियुक्त नवनीत भदौरिया की अग्रिम जमानत निरस्त कर दी गयी है, उसके विरुद्ध एन.बी.डब्लू. जारी किया था। यहां ध्यान देने योग्य यह भी है कि माननीय उच्च न्यायालय के आदेश दिनांकित 05.07.2024 तथा माननीय उच्चतम न्यायालय के आदेश दिनांकित 29.07.2024 तथा इस न्यायालय के आदेश दिनांकित 22.07.2024 के बावजूद अभियुक्त नवनीत भदौरिया द्वारा न्यायालय में व्यक्तिगत रूप से उपस्थित न होते हुए जरिए अधिवक्ता न्यायालय में प्रार्थनापत्र अंतर्गत धारा 70 (2) दं.प्र.सं. प्रस्तुत करते हुए तकनीकी आधार पर, उसके विरुद्ध जारी एन.बी.डब्लू. को निरस्त करने की प्रार्थना की गयी है। न्यायालय के आदेश दिनांकित 22.07.2024 के अवलोकन से स्पष्ट है कि न्यायालय द्वारा उक्त आदेश में माननीय उच्च न्यायालय के आदेश का अंकन करते हुए अभियुक्त उपरोक्त के विरुद्ध एन.बी. डब्लू. जारी किया गया है। वर्तमान में पत्रावली आरोप विरचन के स्तर पर नियत है। अभियुक्त नवनीत भदौरिया के अतिरिक्त अन्य सभी अभियुक्त न्यायालय में व्यक्तिगत रूप से उपस्थित आ रहे हैं। अभियुक्त नवनीत भदौरिया की अनुपस्थिति के कारण वाद के निस्तारण में विलंब हो रहा है। अभियुक्त नवनीत भदौरिया द्वारा विचारण में सहयोग न करते हुए तथा न्यायालय में उपस्थित न होते हुए जरिए अधिवक्ता तकनीकी आधार पर प्रार्थनापत्र अंतर्गत धारा 70 (2) दं.प्र.सं. प्रस्तुत किया गया है। आदेश दिनांकित 22.07.2024 के अवलोकन तथा अभियुक्त उपरोक्त के आचरण के दृष्टिगत तथा माननीय उच्च न्यायालय के आदेश दिनांकित 05.07.2024 के आलोक में प्रार्थी / अभियुक्त का प्रार्थनापत्र अंतर्गत धारा 70 (2) दं.प्र.सं. स्वीकार होने योग्य नहीं है।"

(xii) From a perusal of the aforesaid part of the order dated 21.08.2024, which relates to rejection of Application under Section 70 Cr.P.C./ Section 72 BNSS, it is apparent that the Trial Court, upon due consideration of the facts of the case, particularly the conduct of the applicant, rejected the said application.

(xiii) In regard to the conduct of the applicant, it is apparent from the record that anticipatory bail was granted by this Court vide order dated 18.11.2022 and thereafter the order dated 18.11.2022 granting anticipatory bail was cancelled by this Court vide order dated 05.07.2024. This order was passed after taking note of the fact that the applicant did not appear personally on 16.06.2023, 28.06.2023, 27.07.2023, 10.08.2023, 21.08.2023, 17.11.2023, 18.01.2024 and 29.01.2024.

(xiv) While cancelling the bail, this Court specifically ordered that "opposite party No. 2 is directed to surrender before the Trial Court forthwith." The expression 'surrender' means appearance personally before the concerned court.

(xv) In this case, the applicant challenging the order dated 05.07.2024 approached the Hon'ble Apex Court and the Hon'ble Apex Court, considering the conduct of the applicant, declined to interfere in the matter and dismissed the Special Leave Petition (SLP) vide order dated 29.07.2024 that too without providing the benefit of the judgment passed in the case of **Tarsem Lal (Supra)**.

(xvi) Despite the aforesaid, the applicant again avoided the court proceedings and without making him personally present before the court concerned preferred two applications i.e. Application under Section 70 Cr.P.C./ Section 72 BNSS and Application under Section 88 Cr.P.C./ Section 91 BNSS, in relation to which, this Court has already observed herein-above that the Trial Court has not committed any

error in rejecting the prayer seeking benefit of Section 88 Cr.P.C./ Section 91 BNSS.

(xvii) From the aforesaid, it is clear that the applicant does not want to co-operate with the trial and is avoiding the proceedings on one pretext and other by moving applications, referred above.

(xviii) Thus, this Court finds that the Trial Court has not committed any error in rejecting the application of the applicant preferred under Section 70 Cr.P.C./ Section 72 BNSS seeking recall of Non-Bailable Warrant.

15. For the reasons aforesaid, this Court is not inclined to interfere in the impugned order dated 21.08.2024. The instant application is accordingly **rejected**. Costs made easy.

Order Date :- 30th August, 2024
Mohit Singh/-