

# State (Nct Of Delhi) Through Deputy ... vs Roohullah Noori @ Akbar on 27 November, 2024

**Author: Chandra Dhari Singh**

**Bench: Chandra Dhari Singh**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 6008/2023

STATE (NCT OF DELHI) THROUGH DEPUTY

COMMISSIONER OF POLICE, CRIME-III, DELHI .....Petit

Through: Mr. Sanjeev Bhandari, ASC

versus

ROOHULLAH NOORI @ AKBAR

Through: None.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% 27.11.2024

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) has been filed on behalf of the petitioner seeking the following reliefs:

"A. Allow the present Petition;

B. Quash and/or set aside order dated 17.08.2023 and 18.08.2023 to the extent of observation and/or remarks and bailable warrants issued against the Officers of the Delhi Police vide order dated 18.08.2023 passed by the Court of Sh. Paw an Kumar Matto, Ld. Special Judge (NDPS)/ ASJ, North East District, Karkardooma Courts, Delhi in FIR No. 52/2023 PS Crime Branch u/s 21(c)/29/61185 NDPS Act, 1985 titled as "State vs. Roohullah Noori@ Akbar & Ors."

C. Recall and/or cancel the bailable warrants issued against the Officers of the Delhi Police vide order dated 18.08.2023 passed by the Court of Ld. Special Judge (NDPS)/ASJ, North- East District, Karkardooma Courts, Delhi in FIR No. 52/2023 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/12/2024 at 01:05:29 PS Crime Branch u/s 21 (c)/29/61 /85 NDPS Act, 1985 titled as "State vs. Roohullah Noori@ Akbar

& Ors. "; and D. Pass such other(s) as are deemed fit and proper in the facts and circumstances of the case and to meet the ends of justice."

2. The brief facts that led to the filing of the instant petition are that on 27th February, 2023, at about 5:00 PM, a secret information was received and a raid was conducted at Gali No. 30/4, Jafrabad, Delhi when the accused persons were apprehended, and approximately 3.556 Kg Heroin was recovered which led to the registration of FIR bearing no. 52/2023 dated 27th February, 2023 at Police Station - Crime Branch, for offences punishable under Sections 21(c)/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. During the course of investigation, various accused persons were arrested and were sent to judicial custody which got extended from time to time by the learned Trial Court.

4. Thereafter, an application to release vehicle bearing no. HR 26 CC 6477 to the accused on Superdari was filed before the learned Trial Court. The Investigating Officer (hereinafter "IO") filed a reply to the said application. Then, on 21st July, 2023, the Court concerned, not being convinced with the reply of the IO, issued notice to the DCP, Crime Branch for appearance.

5. It is stated that since the DCP, Crime Branch was busy in administrative work related to the G20 Summit, he deputed ACP Umesh Barthwal to appear before the learned Trial Court on his behalf.

6. Thereafter, on 17th August, 2023, the learned Trial Court passed an order directing the DCP to appear before the Court on 18th August, 2023. On This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/12/2024 at 01:05:29 receipt of the notice dated 17th August, 2023, the DCP sought exemption from personal appearance from the learned Trial Court and sent a request through SI Amit Grewal owing to exigencies of official duty.

7. Subsequently, on 18th August, 2023, the learned Trial Court passed an order inter alia issuing bailable warrants in the sum of Rs. 5,000/- against the DCP and the IO. Being aggrieved by the same, the petitioner has filed the present petition seeking setting aside of the order dated 17th August, 2023 and 18th August, 2023 to the extent of expunging observations and/or remarks and bailable warrants issued against the officers of the Delhi Police, seeking cancelation of the bailable warrants issued against the officers of the Delhi Police vide order dated 18th August, 2023.

8. Learned ASC appearing on behalf of the petitioner submitted that the directions issued by the learned Trial Court vide the impugned orders are completely illegal, without jurisdiction, out of context and has no relation with the concerned matter. The said directions of the learned Trial Court are in no manner relevant for deciding the issue pending before the learned Trial Court.

9. It is submitted that from the bare perusal of the contents of the impugned orders, it is clear that the issuance of bailable warrants against petitioner/DCP and the IO are unwarranted and without

any legal basis.

10. It is submitted that the learned Trial Court grossly erred in issuingailable warrants while assigning no reason for rejecting his plea for exemption from physical appearance.

11. It is submitted that the learned Trial Court ought to have restrained itself from making any comment on an officer's performance, as that would clearly amount to "overreach" and "trespassing" into the exclusive domain This is a digitally signed order.

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12. In support of his arguments, the learned ASC relied upon various judgment namely Sanjay Kumar Sain v. State of NCT of Delhi, 2023 SCC OnLine Del 1260 ; Ajit Kumar v. State (NCT of Delhi), 2022 SCC OnLine Del 3945 and State v. Shadab, 2023 SCC OnLine Del 8159 submitting to the effect that the said judgments pertain to the similar factual situation and the Coordinate Benches of this Court in the said judgments have cancelled theailable warrants issued against the Delhi Police officers and expunged the remarks made by the Court below, such as in the instant petition.

13. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

14. There is no appearance on behalf of the respondent.

15. Heard the learned ASC appearing on behalf of the petitioner and perused the material available on record including the judgments relied upon by the learned ASC.

16. The petitioner has assailed the impugned orders dated 17th August, 2023 and 18th August, 2023, relevant paragraphs of the same are as under:

Order dated 17th August, 2023 -

"..Accused Ajay Kumar has been produced in JC, but, IO/SI Anuj did not come for seeking remand of this accused till 5:00 PM.

The Naib Court posted in this court had telephonically contacted to the IO, who told him that he had forgotten to file the application for extension of judicial custody remand, as, earlier the judicial custody remand of this accused Ajay Kumar was extended till 16.08.2023 and on dated 16.08.2023, this accused was not produced in JC and today, this accused Ajay Kumar has been produced in JC. The Naib Court also told to this court that SI Anuj has asked to HC Jaspal Singh for This is a digitally signed order.

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At the request of SI Dheeraj Malik (Naib Court), this court had waited for coming of HC Jaspal Singh till 5:40 PM and at 5:40 PM, HC Jaspal Singh has filed an application for seeking judicial custody remand of this accused Ajay Kumar for one day.

Accordingly, accused Ajay Kumar, who is alleged to have committed offence punishable u/s. 29 of the NDPS Act, is remanded in judicial custody till 18.08.2023. He is ordered to be produced in this court on 18.08.2023 .

DCP, Crime is also called upon for 18.08.2023. Notice to DCP, Crime be prepared and be handed over to HC Jaspal Singh, so that notice to DCP, Crime may be served for tomorrow..."

Order dated 18th August, 2023 -

"..Today all the five accused have been produced in JC. Today, Sh. Vibhudh Singh, Advocate has appeared on behalf of the accused Balraj Singh and submitted that he will file the vakalatnama on behalf of the accused during the course of the day. He is left at liberty to file the same in the course of the day.

The deputed IO/SI Amit Grewal has filed an application for seeking judicial custody remand of these five accused for 8 days and submitted that IO has gone in the court of Sh. Prashant Sharma. Ld. ASJ/Saket Court.

Since, yesterday accused Ajay Kumar was produced in the court, but, IO did not appear for seeking extension of judicial remand and at the request of the Naib court posted in this court, this court had to wait till 5:40 PM, for moving an application for seeking the judicial remand of accused Ajay Kumar and at 5:40 PM, HC Jaspal Singh had appeared and filed an application for seeking judicial remand of accused Ajay Kumar, so, taking into consideration the negligent conduct of the IO/SI Anuj, this court had chosen to call the DCP, Crime for today, but, DCP, Crime has failed to appear, he has sent a request through SI Amit Grewal that due to This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/12/2024 at 01:05:30 exigency of official duty, he sought exemption. But, it is no where mentioned that as to what is the exigency of the official duty. This deputed IO has told that the DCP, Crime is on duty. So, in the given circumstances,

the application sent by the DCP, Crime for seeking exemption from the personal appearance is dismissed.

B/W in the sum of Rs.5000/- are ordered to be issued against the DCP, Crime. Same are ordered to be executed through the Commissioner of Police, Delhi, for the next date of hearing.

IO/SI Anuj is also called upon for the next date of hearing through the B/W in the sum of Rs.5000/-. Same is ordered to be executed through the DCP, Crime.

Since, accused Roohul lah Noori @ Akbar, Siddiq Ansari, Guddu Ansari are alleged to have committed offences punishable u/s. 21 (c)/29 of the NDPS Act and accused Ajay Kumar and Balraj Singh are alleged to have committed offence punishable u/s 12(c)/29 of the NDPS Act, so, in view of the application moved by the deputed IO, all the five accused are remanded in judicial custody till 22.08.2023. All these accused are ordered to be produced in this court on 22.08.2023. Copy of this order be given dasti to the deputed IO..."

17. Perusal of the aforesaid extracts of the impugned order dated 17th August, 2023 shows that on the concerned date of hearing, the accused Ajay Kumar was produced from judicial custody, however, IO/SI Anuj did not come to the Court until 5:00 PM.

18. In the said order, it is further noted that the Naib Court had telephonically contacted the concerned IO who informed him that he forgot to file the application for extension of judicial custody remand as earlier the judicial custody remand of the said accused was extended till 16th August, 2023 but the accused was not produced on 16th August, 2023.

19. It was also informed by the IO that HC Jaspal Singh will move an This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/12/2024 at 01:05:30 application for extension of judicial custody and requested the Court to wait for HC Jaspal Singh to file such application. Thereafter, HC Jaspal Singh filed the application and accordingly, the custody of the said accused was extended till 18th August, 2023. Further, the DCP, Crime Branch was called upon for 18th August, 2023 and accordingly, notice was issued.

20. Perusal of the order dated 18th August, 2023 shows that it was observed by the Court concerned that on the preceding day of hearing the IO did not appear and asked HC Jaspal Singh to move an application for extension of judicial custody who filed the said application at 5:40 PM. The learned Trial Court observed that the said acts of the officer of Delhi Police amounts to negligent conduct due to which the DCP was called upon. However, the DCP failed to appear and instead sent a request through SI Amit Grewal due to exigency of official duty, and sought for exemption. The learned Trial Court noted that no where it has been mentioned in the exemption application as to what is the exigency of the official duty. Taking the same into consideration, the learned Trial Court

dismissed the application of the DCP seeking exemption from physical appearance and further issued bailable warrants against the DCP and IO Anuj in the sum of Rs. 5,000/-.

21. At the outset, it is pertinent to mention that while conducting judicial proceedings, although the Courts must ensure that the proceedings are conducted in a fair and impartial manner, they must take into account the ground realities, the complex and complicated manner of execution of administrative work, and the settled position of law.

22. While dealing with a similar situation the Coordinate Bench of this Court in Ajit Kumar (Supra) noted that the judicial officers should refrain This is a digitally signed order.

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"33. In such cases, the Courts have time and again come to the rescue of officers and public servants by ordering the deletion of such remarks and directions which are glaring examples of overstepping of jurisdiction by the Trial Courts.

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36. The Hon'ble Supreme Court in K.H. Siraj v. High Court of Kerala, (2006) 6 SCC 395 had pointed the following qualities of a good judicial officer:

"57. ...A Judicial Officer must, apart from academic knowledge, have the capacity to communicate his thoughts, he must be tactful, he must be diplomatic, he must have a sense of humour, he must have the ability to defuse situations..."

37. Every word forming part of a judicial order forms permanent record. Use of denigrating remarks against anyone, especially against police officials impeaching their credibility and questioning their sense of dedication towards duty, is not the best course adopted by a judicial officer, that too when the same is not required for the adjudication of the case before the Court. Such criticism may have a devastating effect on the professional career of an officer. It is also bound to have everlasting affect on the reputation of a person. This Court is conscious of the fact that police officers are expected to be at the desired place and desired time with utmost efficiency, both by the general public as well by the Courts. Though the police officers are duty bound to discharge their responsibilities with utmost conviction, the practical difficulties which are faced by them cannot be overlooked and disregarded by the Courts. At the same time, such regard by the courts can not by any stretch of imagination or interpretation be take to be lack of power of the court to pass order regarding the power to point out any This is a digitally signed order.

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irregularity omission or commission of any act as directed by the Court, or any disobedience to obey the directions of the Court. This Court rather vide this order wants to convey that judicial strictures against anyone need to be passed with utmost circumspection. The judicial power comes with utmost responsibility to exercise adjudicatory liberty to express oneself. Judicial strictures against a police officer to the extent as expressed in the present case are problematic though every disapproval expressed by exercise of adjudicatory liberty of expression may not fall in the realm of lack of judicial restraint.

38. The strictures as passed in the present case to the extent of observing that the officer in question has no sense of responsibility and devotion towards duty and further directing the Commissioner of Police to take corrective measures and take action against the police official and further observing that the Commissioner of Police, Delhi may take a call as to whether the petitioner is fit for performing duties as SHO or not goes beyond the mandate of law, judicial precedents and discipline of judicial restraint. This does amount to over stepping adjudicatory liberty of expression exercised by a judge. Such observations have the effect of stigmatizing without conviction, sentencing without inquiry and affect career in future of an officer which had to be left to the internal administrative vigilance and disciplinary proceedings to be conducted by the parent department of the officer in question.

39. This Court makes it clear once again that this order in no way undermines the majesty of the Court or the fact that the judicial directions need to be obeyed by the police officials concerned and the power of the courts to pass orders pointing out their disobedience or point out any fault in investigation, etc, cannot be questioned, however, in this regard, Section 6 of Chapter 1, Part H ('The Judgment') of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" needs to be kept in mind and also the judicial precedents of the Hon'ble Apex Court and the High Court have to be kept in mind as This is a digitally signed order.

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40. The learned Trial Court could have forwarded the proceedings and the issue faced by the Court as well as the act of disobedience to the concerned Commissioner of Police Delhi to take action as per their departmental Standing Orders and the rules applicable to them. In the relevant cases, recourse could have been taken to the Delhi Police Act and the relevant Sections under law under which the Court can issue notice and initiate appropriate action if so warranted in a particular case. However, to direct the authority concerned to initiate action as mentioned in the impugned order and thereafter, ask for compliance to be filed and pass remarks as in the impugned order was unwarranted in the facts and circumstances of the case.

41. Judgments and orders passed by the courts are often permanent in nature, so is at times the stigma attached to a person suffered by virtue of an uncalled for remark unwarranted in the facts and circumstances of a particular case. As adjudicatory force of the country, judicial restraint as warranted by law and judicial proceedings is one of the qualities of a judicial officer.

42. Undoubtedly and there can be no two views about this that judicial orders and directions passed to ensure rule of law in society have to be obeyed and respected to achieve cherished goal of independence of judiciary, however, undesirable judicial strictures that penalize without enquiry, stigmatize without relevant proceedings with remedy of only being expunged as we have hierarchical system of judiciary have to be avoided. Social memories that stigmatize a person in society or in one's department or social circles are often as permanent as the judgments and orders.

43. For the reasons stated hereinabove, the remarks passed and directions issued against the petitioner in the impugned order dated 06.09.2022, as reproduced in Para 8 of this This is a digitally signed order.

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44. The petition stands allowed in above terms..."

23. The aforesaid view was also followed by another Coordinate Bench of this Court in Shadab (Supra). In both the judgments, i.e., Shadab (Supra) and Ajit Kumar (Supra), the Coordinate Benches of this Court have dealt with the cases, facts of which are similar to the present case, and categorically held that making such castigating remarks and issuance of warrants against the police officers is not required for adjudication of the case before the Court concerned as the same has everlasting affect on the reputation of the person concerned and their credibility is impeached without any cogent reasons. The same was also observed in another judgment passed by the Coordinate Bench of this Court in Sanjay Kumar Sain (Supra).

24. In Dr. Dilip Kumar Deka v. State of Assam, (1996) 6 SCC 234, the Hon'ble Supreme Court, while dealing with the tests to be applied when dealing with question of deletion of disparaging remarks against authorities, held as under:

"..6. The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a court of law in cases to be decided by it were succinctly laid down by this Court in State of U.P. v. Mohd. Naim [AIR 1964 SC 703 : (1964) 1 Cri LJ 549 : (1964) 2 SCR 363]. Those tests are:

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- (a) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;
- (b) Whether there is evidence on record bearing on that conduct justifying the remarks; and
- (c) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

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7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice..."

25. It has been held by the Hon'ble Supreme Court as well as various High Courts that the judicial time must not be wasted in determining the lapses in investigation and by making unpleasant criticism against the investigating officers. Bearing the said principle in mind, the law is no longer res integra and it is settled that the castigating remarks made by the Courts may be deleted/expunged if the Court deems the same to be unnecessary and unwarranted.

26. It is observed by this Court that despite various judgments having being passed from time to time, similar orders are still being passed against the police officials and the same is highly unwarranted.

27. Therefore, keeping in mind the aforesaid discussions on law and the This is a digitally signed order.

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factual situation of the present case, this Court is of the considered view that the learned Trial Court erred in making castigating remarks/observations against the DCP and IO Anuj and the same was unnecessary as well as unwarranted.

28. Even calling the DCP to appear before the Court was unnecessary as no purpose would have been served by doing the same. The learned Trial Court held that the conduct of the said officers is negligent and the same was held without any application of judicial mind. Just because the concerned IO had failed to file the application for extension of judicial custody of the concerned accused, the same was not a sufficient ground to direct the DCP to appear physically.

29. Further, it is highly possible that the DCP might be occupied in his official duty due to which he had duly made an application seeking exemption from physical appearance which was also erroneously dismissed by the learned Trial Court despite the fact that the DCP had already deputed SI/IO Amit Grewal for the assistance of the learned Trial Court. Therefore, issuing bailable warrants results in lowering the image and reputation of high ranking police officials and the same would also have a bearing on their service records which is not warranted.

30. Thus, it is held that the learned Trial Court erred in making castigating remarks/observations against the DCP and the IO. The learned Trial Court also erred in dismissing the application of the DCP seeking exemption from personal appearance and further erred in issuing bailable warrants against the DCP and the IO.

31. In view of the foregoing paragraphs, the remarks/observations made by the learned Trial Court in the impugned orders dated 17th August, 2023 This is a digitally signed order.

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a. The following observations made in the impugned order dated 17th August, 2023 are set aside:

"...The Naib Court posted in this court had telephonically contacted to the IO, who told him that he had forgotten to file the application for extension of judicial custody remand, as, earlier the judicial custody remand of this accused Ajay Kumar was extended till 16.08.2023 and on dated 16.08.2023, this accused was not produced in JC and today, this accused Ajay Kumar has been produced in JC. The Naib Court also told to this court that SI Anuj has asked to HC Jaspal Singh for moving an application and he has requested to this court to wait for coming of HC Jaspal Singh.

\*\*\* DCP, Crime is also called upon for 18.08.2023. Notice to DCP, Crime be prepared and be handed over to HC Jaspal Singh, so that notice to DCP, Crime may be served for tomorrow..."

b. The following observations made in the impugned order dated 18th August, 2023 are set aside:

"..Since, yesterday accused Ajay Kumar was produced in the court, but, IO did not appear for seeking extension of judicial remand and at the request of the Naib court posted in this court, this court had to wait till 5:40 PM, for moving an application for seeking the judicial remand of accused Ajay Kumar and at 5:40 PM, HC Jaspal Singh had appeared and filed an application for seeking judicial remand of accused This is a digitally signed order.

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B/W in the sum of Rs.5000/- are ordered to be issued against the DCP, Crime. Same are ordered to be executed through the Commissioner of Police, Delhi, for the next date of hearing.

IO/SI Anuj is also called upon for the next date of hearing through the B/W in the sum of Rs.5000/-. Same is ordered to be executed through the DCP, Crime...."

c. Bailable warrants issued vide the impugned order dated 18th August, 2023 by the learned Special Judge (NDPS)/ASJ/North East District/KKD Courts/Delhi against the DCP, Crime Branch and SI/IO Anuj are cancelled and set aside.

32. Accordingly, the instant petition stands disposed of. Pending applications, if any, stand dismissed.

CHANDRA DHARI SINGH, J NOVEMBER 27, 2024 rk/ryp/mk Click here to check corrigendum, if any This is a digitally signed order.

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