

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 3061 of 2019

Mujtaba Ahmad ... Petitioner
Versus
Union of India through CBI ... Opposite Party

Coram: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner : Mr. Raunak Sahay, Adv.
For the CBI : Mrs. Neetu Sinha, Adv.

06 / 09.07.2020

Heard the parties through Video Conferencing.

This criminal miscellaneous petition has been filed with a prayer for invoking the jurisdiction of this court under section 482 Cr.P.C. with prayer to restore the Cr. Appeal (SJ) No. 459 of 2019 to its original record. It is further submitted by learned counsel for the petitioner that Cr. Appeal (SJ) No. 459 of 2019 stood dismissed on 08.08.2019 for non-compliance of the peremptory order dated 16.07.2019 by a co-ordinate Bench of this court passed in that appeal. It is next submitted that Cr. Appeal (SJ) No. 459 of 2019 has been preferred by the petitioner against the judgment of conviction and order of sentence passed by learned Special Judge, CBI, Ranchi in R.C. case no. 02 (A)/1997R and in the said judgment, *inter alia* the appellant has been convicted for the offence punishable under section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 and sentenced to rigorous imprisonment of 5 years and fine of Rs. 10,00,000/- and in default of payment of fine to undergo imprisonment of six months and also convicted him for the offences punishable under section 120B read with sections 420/407/467/468/471 of the Indian Penal Code and sentenced him to rigorous imprisonment of 2 years and fine of Rs. 10,00,000/- and in default of payment of fine to undergo imprisonment of six months . It is submitted by learned counsel for the petitioner that the Co-ordinate Bench passed a

peremptory order dated 16.07.2019 granting three weeks' time to the appellant for removing the defect which, included furnishing the surrender certificate of this petitioner who was the appellant of the said appeal, as on the date of judgment, the petitioner was represented through his counsel and after judgment, though his bail was cancelled and non-bailable warrant of arrest has been issued against him yet he has not surrendered before the trial court to serve out the sentence. It is next submitted by learned counsel for the petitioner that because of prolonged illness of the petitioner, he could not surrender in the trial court. It is then submitted by learned counsel for the petitioner that petitioner is 77 years of age and he is under medical treatment as he is seriously ill and at present, he is undergoing treatment in the district of Chapra in the state of Bihar. It is next submitted by learned counsel for the petitioner that Cr. Appeal (SJ) No. 459 of 2019 be restored to its original file.

Learned counsel Mrs. Neetu Sinha, appearing for the CBI on the other hand vehemently opposes the prayer for restoration of Cr. Appeal (SJ) No. 459 of 2019 and submits that the petitioner has neither deposited the fine amount of Rs. 10,00,000/- nor he has disclosed his present address, sufficient enough to identify his present location and the petitioner wants to evade his arrest as he has not surrendered before the trial court, hence, in view of this conduct of the petitioner, it is submitted that Cr. Appeal (SJ) No. 459 of 2019 ought not be restored to its original file.

Having heard the submissions made at the Bar and after careful perusal of the record, it is crystal clear that the exact present address of the petitioner is not revealed in the petition nor his present address or parentage has been mentioned in the outdoor patient treatment prescription issued by one doctor; copy of which has been filed by the petitioner in this case. Cover page of the outdoor treatment prescription issued by another doctor kept at page 14 of the brief, the address of the petitioner has been mentioned as Dariyapur, Patna and not any address in the district of Chapra as claimed by the petitioner in paragraph 6 of the

petition. Thus it is crystal clear that the petitioner has not disclosed his present address, is sufficient enough to identify his present location deliberately and in view of the said outdoor treatment prescription, the copy of which is kept at page -14 of the brief the claim of the petitioner that he is at present at Patna is highly doubtful as the claim of the petitioner that he is undergoing treatment in the district of Chapra in Bihar is contradicted by the said medical documents, submitted by him wherein his address has been mentioned as Dariyapur, Patna. It is crystal clear that the petitioner has succeeded in evading his arrest for more than one year and four months after his conviction and has also avoided paying the fine amount without any plausible reason.

In view of this conduct of the petitioner and the facts of this case, this court is of the considered view that this is not a fit case to restore the Cr. Appeal (SJ) No. 459 of 2019 unless and until, the petitioner surrenders before the trial court. Accordingly, the prayer to restore Cr. Appeal (SJ) No. 459 of 2019 is dismissed with a direction to the petitioner to surrender before the trial court forthwith, failing which, the trial court is directed to take all coercive steps against the petitioner for his apprehension for serving out the sentence, including issuing notice to the bailers.

However, liberty is given to the petitioner to renew the prayer of restoration of Cr. Appeal (SJ) No. 459 of 2019 after he surrenders before the trial court.

This criminal miscellaneous petition is disposed of accordingly.

(ANIL KUMAR CHOUDHARY, J.)

AFR-Smita/-