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

+ CRL.REV.P. 141/2023

STATE

..... Petitioner

Through: Mr. Sanjay Jain, ASG, Mr. Rajat Nair, SPP, Mr. Madhukar Pandey, SPP, Ms. Ashima Gupta, and Ms. Harshita Sukhija, Advocates along with Insp. Kamal Kumar, Crime Branch.

versus

MOHD. QASIM & ORS.

..... Respondent

Through: Mr. Abu Bakr Sabbaq, Advocate for R-1,2, 3 and R-6.
Mr. Adit and Ms. Aparajita Sinha, Advocates for R-4.
Ms. Sowajhanya Shankanan, Mr. Abhinav Sekhri and Mr. Siddharth Satija, Advocates for R-9.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

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13.02.2023

CRL.M.A. 3811/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.REV.P. 141/2023 & CRL.M.A. 3810/2023

3. By way of present petition under Section 397 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”), the petitioner i.e. State seeks setting aside of order dated 04.02.2023 (“impugned order”) passed by the learned Additional Sessions Judge-04/Special Judge (NDPS), South East District, Saket Courts (“Trial Court”) in Sessions Case No. 318/2022 titled as “*State v. Mohd. Ilyas@Allen*” vide which all accused chargesheeted, except Mohd. Ilyas, have been discharged.

4. Issue notice. Learned counsels for respondent nos. 1, 2, 3, 4, 6 and 9 accept notice.

5. Learned Additional Solicitor General submits that the learned Trial Court has erred in discharging the respondents, without considering the evidence and documents on record. It is stated that third supplementary chargesheet was disregarded and not considered by the learned Trial Court by relying upon judicial precedents which are not applicable in the facts of present case. It is also stated that the observations made by the learned Trial Court, particularly in para Nos. 44 to 47 of impugned order, against the investigating agency will prejudice further investigation that is being carried out.

6. Controverting the arguments of learned ASG, learned counsels for respondent nos. 1, 2, 3, 4, 6 and 9 state that there is no infirmity in the impugned order, and the learned Trial Court has taken note of the contents of third supplementary chargesheet and has appropriately dealt with the same. It is argued that in the circumstances of present case, it was not improper on the part of learned Trial Court to have passed the remarks as recorded in para nos. 44 to 47 of impugned order. It is also stated that the

case diary as well as the Trial Court Record (TCR) be called for to ascertain as to whether there was any illegality in the impugned order.

7. I have heard learned ASG as well as learned counsels for respondents and perused the material on record.

8. Though arguments have been addressed on behalf of petitioner/State as well as respondent nos. 1, 2, 3, 4, 6 and 9, the other respondents remain unrepresented today. In such circumstances, issue notice to respondent nos. 5, 7, 8, 10 and 11 through all permissible modes, including electronically.

9. Learned counsels who are present on behalf of respondents today state that they do not want to file reply, but seek liberty to file written submissions, not running into more than four pages, and case laws they want to rely upon. Let the same be filed before the next date of hearing with advance copy to the other side. Similarly, the State is also at liberty to file short note of their written arguments before the next date of hearing.

10. In the meanwhile, the rest of the respondents may appear on the next date of hearing.

11. In the circumstances, as argued before this Court, this Court deems it appropriate to summon the TCR in digitized form. Since the date which is being fixed by this Court is prior to the date fixed by the learned Trial Court for conducting trial of accused Mohd. Ilyas, no order needs to be passed against the said trial.

12. The learned ASG also stated that it was improper for the learned Trial Court to have passed scathing remarks against investigating agency without there being any occasion or material on record to do so, especially since the case was still at the stage of framing of charges. Having considered the contention of the learned ASG as well as going through the contents of the

para nos. 44 to 47 of the impugned order, this Court is of the opinion that this aspect will be considered by this Court at the time of final disposal as well as oral prayer made for expunging remarks. It is also ordered that since further investigation is being carried out against certain accused persons, the observations made in para nos. 44 to 47 against the investigating agency, as well as suspecting their intent to file the charge-sheets under investigation, will not affect either further investigation or the trial of any accused person.

13. Re-notify on 16.03.2023 at 2:15 PM.

14. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 13, 2023/zp