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Crl.A.No.250 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	12.03.2025
<i>Pronounced on</i>	21.03.2025

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

Crl.A.No.250 of 2025

Mohammed Faruk

...Appellant

Vs.

Union of India,
Rep. by its Investigation Officer,
National Investigation Agency,
Kochi.

...Respondent

Prayer: Criminal Appeal filed under 21(4) of National Investigation Agency Act, 2008, to set aside the impugned order in Crl.M.P.No.76 of 2025 dated 30.01.2025 on the file of the Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases, Chennai at Poonamallee, Chennai and consequent remand of the appellant.

For Appellant : Mr.I.Abdul Basith

For Respondent : Mr.R.Karthikeyan,
Special Public Prosecutor



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JUDGMENT

M.S.RAMESH, J.

1.1. The brief facts of the case are as follows:-

1.2. The appellant herein has been arrayed as the 11th accused in Spl.S.C.No.20 of 2022, which is pending trial before the Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases, Chennai at Poonamallee, Chennai (hereinafter referred to as 'the Special Court'), wherein he has been charged of having committed the offences under Sections 153(A)(1)(B), 341, 294(b), 302, 302 r/w 109, 212 of Indian Penal Code (IPC) under Sections 18, 16(1)(a) under Unlawful Activities (Prevention) Act.

1.3. When the case was listed for trial on 30.01.2025, the appellant had filed a petition under Section 317 of the Criminal Procedure Code (Cr.P.C.) in Crl.M.P.No.73 of 2025, to condone his absence on the ground of ill-health.

1.4. The Special Court had, in its order dated 30.01.2025, recorded that about 65 witnesses were examined during the course of trial, which commenced on 01.12.2021 and except A11, A1 to A13 were present, apart from three witnesses, who could not be examined on that day due to the absence of A11. It was further recorded therein that the appellant had



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filed similar petitions under Section 317 Cr.P.C. on ten earlier occasions between 06.08.2024 and 28.11.2024, owing to which the trial proceedings were delayed and accordingly dismissed the petition in Crl.M.P.No.73 of 2025. Consequently, a Non-bailable Warrant (NBW) was issued against the appellant.

1.5. On the same day, i.e. 30.01.2025, the appellant had personally appeared before the Special Court and filed a petition in Crl.M.P.No.76 of 2025 under Section 70(2) of Cr.P.C., seeking to recall the NBW. The Special Court, however, dismissed this petition also on the same day, by quoting similar reasons, as spelt out in its order passed in Crl.M.P.No.73 of 2025 dated 30.01.2025 and observed that the appellant has been adopting delaying tactics in completing the trial and accordingly remanded him into judicial custody.

1.6. The order in Crl.M.P.No.76 of 2025 dated 30.01.2025 is assailed in this appeal.

2. Before we venture to address the grounds raised by the appellant, challenging the order impugned, we intend to place on record certain ally of facts that are being regularly brought to our attention through appeals arising out of orders passed by the same Special Court.



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3. In the past one month, we are confronted with several orders of this Special Court, rejecting petitions filed by the accused under Section 317 Cr.P.C. In all these petitions, the only ground of rejection expressed by the Special Court is that the accused has already filed similar petitions under Section 317 Cr.P.C., which came to be allowed by the Court and the one, which is put under challenge before us, is a dilatory tactic adopted by the concerned accused.

4. With this background in mind, we deem it appropriate to bring to the notice of the Special Court with regard to the underlying manner of procedure to be adopted by a Trial Court, while dealing with a petition under Section 317 Cr.P.C. to dispense with the appearance of an accused on a particular hearing date or under Section 70(2) for recalling a NBW.

5. We hasten to add here that the power of the Special Court to deal with either of these petitions is a discretionary power vested with the Special Court. However, such discretionary powers requires to be exercised judicially, with extreme care and caution, which ratio has been consistently reiterated by the Hon'ble Supreme Court of India in several of its decisions, including the decision in ***Inder Mohan Goswami and***



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Another Vs. State of Uttaranchal and Others reported in ***(2007) 12 SCC***

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I. What is expected of the Trial Court to be judicious when it exercises its discretionary powers, is that such powers must be exercised by showing good judgment or sense.

6. In the case of ***Maneka Sanjay Gandhi and Another Vs. Rani Jethmalani*** reported in ***(1979) 4 SCC 167***, the Hon'ble Supreme Court had held that the power to grant exemption from personal appearance should be exercised liberally, when facts and circumstances require such exemption. Thus, when the provisions of Cr.P.C. is silent on certain procedures and powers are left to the discretion of the Criminal Court, it is pertinent for the Criminal Court to act on the principle that every procedure, which is just and fair, is understood as permissible, till it is shown to be expressly or impliedly prohibited by law.

7. In ***Inder Mohan Goswami's case (supra)***, a reference was made to Article 21 of our Constitution, which proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law and held that issuance of NBW involves interference with personal liberty. As to when NBWs should be issued was also dealt



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with therein thus:-

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“When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- *it is reasonable to believe that the person will not voluntarily appear in court; or*
- *the police authorities are unable to find the person to serve him with a summon; or*
- *it is considered that the person could harm someone if not placed into custody immediately.”*

8. It is in this background, the ratio that the discretionary powers must be exercised judiciously with extreme care and caution was recorded, with a dictum to the Courts to try to maintain proper balance between individual liberty and the interest of the public, while issuing NBWs.

9. In the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation and Another*** reported in ***(2023) 1 SCC (Cri) 1***, the Hon'ble Supreme Court had referred to ***Inder Mohan Goswami's case (supra)*** and had frowned upon the Trial Courts issuing NBWs without



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application of mind, in the following manner:-

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“35. Considering the aforesaid two provisions, courts will have to adopt the procedure in issuing summons first, thereafter a bailable warrant, and then a non-bailable warrant may be issued, if so warranted, as held by this Court in *Inder Mohan Goswami v State of Uttaranchal* [*Inder Mohan Goswami v. State of Uttaranchal*, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259]. Despite the aforesaid clear dictum, we notice that non-bailable warrants are issued as a matter of course without due application of mind and against the tenor of the provision, which merely facilitates a discretion, which is obviously to be exercised in favour of the person whose attendance is sought for, particularly in the light of liberty enshrined under Article 21 of the Constitution. Therefore, valid reasons have to be given for not exercising discretion in favour of the said person.

10. In the case of ***Sherif Ahmed and Another Vs. State of Uttar Pradesh and Another*** reported in **2024 SCC OnLine SC 726**, it was cautioned that NBWs cannot be casually issued and the power to grant exemption should also be exercised liberally, in the following manner:-



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“46. We, however, would allow the present appeal to the extent that the nonbailable warrants issued against Manager Singh are unsustainable and should be quashed. It is a settled position of law that non-bailable warrants cannot be issued in a routine manner and that the liberty of an individual cannot be curtailed unless necessitated by the larger interest of public and the State. While there are no comprehensive set of guidelines for the issuance of nonbailable warrants, this Court has observed on several occasions that nonbailable warrants should not be issued, unless the accused is charged with a heinous crime, and is likely to evade the process of law or tamper/destroy evidence.

47. Further, the observation that there is no provision for granting exemption from personal appearance prior to obtaining bail, is not correct, as the power to grant exemption from personal appearance under the Code should not be read in a restrictive manner as applicable only after the accused has been granted bail. This Court in Maneka Sanjay Gandhi v. Rani Jethmalani held that the power to grant exemption from personal appearance should be exercised liberally, when facts and circumstances require such exemption. Section 205 states that the Magistrate, exercising his



discretion, may dispense with the personal attendance of the accused while issuing summons, and allow them to appear through their pleader. While provisions of the Code are considered to be exhaustive, cases arise where the Code is silent and the court has to make such order as the ends of justice require. In such cases, the criminal court must act on the principle, that every procedure which is just and fair, is understood as permissible, till it is shown to be expressly or impliedly prohibited by law.”

11. The Special Court has been consistently demonstrating of being insensitive to all these settled propositions of law and has been consistently rejecting petitions of these nature, including the present case in hand, only on the view that the accused is indulging in dilatory tactics.

12. Before the Special Court, the petition under Section 317 Cr.P.C. was filed for dispensing with the appellant's presence on 30.01.2025. The reason for rejection on the same day and for issuance of a NBW was only on the ground that the appellant had filed similar petitions on ten earlier occasions and was attempting to delay the trial.



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13. We have taken into account the conduct of the appellant on the given day and thereafter, when the case in Spl.S.C.No.20 of 2022 was posted for hearing on 30.01.2025. It is stated before us that the appellant was suffering from Diarrhoea while travelling from his native place to Chennai for attending the hearing and realising that he may not reach the Special Court at 10.30 A.M. on 30.01.2025, he had instructed his Advocate for filing a petition under Section 317 Cr.P.C. However, when this petition in Crl.M.P.No.73 of 2025 was filed, the Special Court had dismissed the petition and issued a NBW against the appellant and adjourned the matter to 31.01.2025. The appellant had reached the Special Court at 11.00 A.M. and on realising the rejection of his Section 317 Cr.P.C. petition, he had presented himself before the Court and filed an advance hearing petition in Crl.M.P.No.74 of 2025, along with a surrender petition and a warrant recall petition in Crl.M.P.No.75 of 2025 and Crl.M.P.No.76 of 2025 respectively, on the very same day. However, the Special Court had rejected the petition on 30.01.2025, for recall of NBW and remanded the appellant to judicial custody, by citing the very same reasons assigned in the rejection order passed in the petition filed under Section 317 Cr.P.C., recording that the appellant was indulging in dilatory tactics.



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14. As recorded earlier, we are being continuously confronted with several orders of the Special Court rejecting petitions under Section 317 Cr.P.C. in a routine manner. Had the Special Court reminded itself of the broad underlying principles in dealing with a petition of this nature, as highlighted by the Hon'ble Supreme Court in the decisions recorded by us above, the travesty could have been avoided. Thus, the disregard to these well settled principles of law and rejecting the petitions under Section 317 Cr.P.C. and 70(2) Cr.P.C. is an arbitrary exercise of its powers.

15. The only factor, which appears to have influenced the Special Court for declining the request to dispense with the appearance of the appellant, is that he had absented himself during several occasions in the recent past and had consequently delayed the trial process. We do not endorse this view of the Special Court, insofar as it records that the trial was being delayed, owing to the absence of the appellant.

16. It is no doubt true that Section 273 Cr.P.C. envisages the recording of evidence in the presence of the accused. The Hon'ble



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Supreme Court, in the case of *Atma Ram and Others Vs. State of*

Rajasthan reported in (2020) 3 SCC (Cri) 846, have recognised this

right of an accused under Section 273 Cr.P.C., to be a “valuable right”.

17. However, the consequential issue would be as to whether the absence of the accused will handicap the Special Court to proceed with trial at all? The answer to this would be in the negative.

18. Section 273 Cr.P.C. commences with the phrase “except as otherwise expressly provided”. The exception to this provision, empowering the Trial Court to proceed with recording of evidence in the absence of an accused, is under Section 299 Cr.P.C. Similar provisions are also found under Section 16(5) of the National Investigation Agency Act, 2008 and 29(5) of the Prevention of Terrorism Act, 2002, which also deal with the procedures and powers of the Special Court to proceed with the trial, in the absence of the accused.

19. *Atma Ram's case (supra)* deals with this issue, in the following manner:-

“17. Section 273 opens with the expression



“Except as otherwise expressly provided....” By its very nature, the exceptions to the application of Section 273 must be those which are expressly provided in the Code. Shri Hegde is right in his submission in that behalf. Sections 299 and 317 are such express exceptions provided in the Code. In the circumstances mentioned in the said Sections 299 and 317, the contents of which need no further elaboration, the courts would be justified in recording evidence in the absence of the accused. Under its latter part, Section 273 also provides for a situation in which evidence could be recorded in the absence of the accused, when it says “when his personal attendance is dispensed with, in the presence of his pleader”. There was a debate during the course of hearing in the present matter whether such dispensation by the Court has to be express or could it be implied from the circumstances. We need not go into these questions as the record clearly indicates that an objection was raised by the advocate appearing for the appellants right at the initial stage that the evidence was being recorded without ensuring the presence of the appellants in court. There was neither any willingness on the part of the appellants nor any order or direction by the trial court that the evidence be recorded in the



absence of the appellants. The matter, therefore, would not come within the scope of the latter part of Section 273 and it cannot be said that there was any dispensation as contemplated by the said section. We will, therefore, proceed on the footing that there was no dispensation and yet the evidence was recorded without ensuring the presence of the accused. The High Court was, therefore, absolutely right in concluding that Section 273 stood violated in the present matter and that there was an infringement of the salutary principle under Section 273.

18. The submissions advanced by Shri Sanjay Hegde, learned Senior Advocate, relying upon paragraphs in Jayendra Vishnu Thakur v. State of Maharashtra [Jayendra Vishnu Thakur v. State of Maharashtra, (2009) 7 SCC 104 : (2010) 2 SCC (Cri) 500] as quoted above, that the right of the accused to watch the prosecution witness is a valuable right, also need not detain us. We accept that such a right is a valuable one and there was an infringement in the present case. What is material to consider is the effect of such infringement. Would it vitiate the trial or such an infringement is a curable one?



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20. With these provisions in mind, the Special Court could have exercised its discretion and proceeded with the trial, subject to the contours of permissibility under Section 299 Cr.P.C., instead of shifting the reason on the appellant for delaying the trial. The Special Court has also cited the fact that on earlier occasions, when the appellant herein had filed petitions under Section 317 Cr.P.C., the same came to be allowed by the very same Court, which orders have now been cited as attempts being made by the appellant to delay the trial.

21. We have recorded all these aspects touching upon the scope of a petition either under Section 317 Cr.P.C. or under Section 70(2) Cr.P.C., with a fond hope that the Special Court will refrain its arbitrary exercise of powers while dealing with these petitions. At the same time, the Special Court shall also endeavour to ensure that whenever petitions of these nature are presented before the Court, the conduct of trial is not affected by resorting to the alternate discretions available under the Cr.P.C., for proceeding without the presence of the accused.

22. For all the foregoing reasons, the impugned order passed in Crl.M.P.No.76 of 2025 dated 30.01.2025 on the file of the Special Court



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under the National Investigation Agency Act, 2008, Sessions Court for

Exclusive Trial for Bomb Blast Cases, Chennai at Poonamallee, Chennai

is set aside. Consequently, the warrant issued by the Special Court in Crl.M.P.No.73 of 2025 dated 30.01.2025 is recalled. The appellant herein shall strictly adhere to the modified bail conditions imposed by a Division Bench of this Court in Crl.A.No.1230 of 2024 on 11.12.2024 and shall cooperate in the trial proceedings. The Criminal Appeal thus stands allowed.

[M.S.R., J] [N.S., J]
21.03.2025

Index:Yes
Neutral Citation:Yes
Speaking order
hvk

Note: Issue order copy on 21.03.2025



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- To
- 1.The District and Sessions Judge,
Special Court under the National Investigation Agency Act, 2008,
Chennai.
 - 2.The Superintendent of Prisons,
Central Prison, Puzhal,
Chennai – 600 066.
 - 3.The Investigation Officer,
Union of India,
National Investigation Agency,
Kochi.
 - 4.The Public Prosecutor,
High Court of Madras.



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M.S.RAMESH, J.
and
N.SENTHILKUMAR, J.

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Pre-delivery judgment made in
Crl.A.No.250 of 2025

21.03.2025