

(2025) 05 DEL CK 0959

In the Delhi High Court

Case No : Criminal Miscellaneous Petition No. 3999 Of 2025, Criminal Miscellaneous Application Nos. 17423, 17422 Of 2025

Arun Kumar

APPELLANT

Vs

State Govt. Of Nct Of Delhi And Anr

RESPONDENT

Date of Decision : 30-05-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 309
Indian Penal Code , 1860 — Section 279, 338

Citation : (2025) 05 DEL CK 0959

Hon'ble Judges : Girish Kathpalia, J

Bench : Single Bench

Advocate : Aman Mehta, Nawal Kishore Jha

Final Decision : Allowed

Judgement

Girish Kathpalia, J

1. The petitioner/accused has assailed order dated 26.04.2025 of learned Trial Magistrate, whereby non-bailable warrants against the petitioner/accused were ordered as neither he nor his counsel on record appeared; and order dated 21.05.2025, whereby application for cancellation of non-bailable warrants was dismissed.

2. Learned APP for State accepts notice and in all fairness submits that subject to cost, the petition can be allowed.

3. It appears that on 26.04.2025, trial in the case FIR No. 193/2014 of PS Naraina for offence under Section 279/338 IPC was listed before the Trial Court, but neither the petitioner/accused nor his counsel on record appeared, though the prosecution witness was present. As noted by the learned Trial Court, the said witness is 71 years old and cancer patient and had appeared five times, coming all the way from Pune. The proxy counsel appearing on 26.04.2025 requested for adjournment on the ground that counsel on record was held up in

some other court, which adjournment request was rejected, observing that Section 309 CrPC does not stipulate such request as a ground for adjournment. Therefore, the learned Trial Magistrate issued non-bailable warrants against the petitioner/accused. Thereafter, on 21.05.2025, the application for cancellation of non-bailable warrants was dismissed by the learned Trial Magistrate. Hence, the present petition.

4. So far as the counsel being held up in some other court, I am in absolute agreement with the learned Trial Court. The adjournments and Passovers are matters of courtesy extended by the court and cannot be treated as a right of a counsel. It is the duty of the counsel to maintain his diary. Dates of hearings are fixed almost always as per convenience of counsel, so they are expected to appear.

5. However, keeping in mind no serious objection from State, the petition is allowed and non-bailable warrants against the petitioner/accused are quashed subject to the petitioner/accused paying costs of Rs. 20,000/- to the witness, who appeared in the circumstances described above and has to now come again from Pune to depose, despite his age and being a cancer patient. The said cost shall be deposited by the accused/applicant with the Trial Court within one week and shall be paid to the said witness as and when he appears. Pending applications also stand disposed of.