

Court No. - 77

Case :- APPLICATION U/S 482 No. - 2937 of 2025

Applicant :- Shlok Yadav

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Saurabh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Shri Saurabh Kumar Pandey, learned counsel for the applicant, Shri Akhilesh Dubey, learned counsel for opposite party no. 2 and Sri Sunil Kumar Kushwaha, learned A.G.A. for the State.
2. The present 482 Cr.P.C. application has been filed to quash the order dated 18.11.2024 (by which non bailable warrant has issued against applicant) passed by A.C.J.M. IV, Court No. 15, District- Jaunpur in Case No. 557 of 2021, under Section 138 N.I. Act, P.S.- Singramau, District- Jaunpur.
3. The contention of learned counsel for the applicant is that he had approached this Court with Application U/S 482 No. 10062 of 2024 seeking direction to quash the NBW, which was disposed of vide order dated 08.04.2024 with the direction that if the applicant appears before the court below within 15 days, then his bail application shall be considered in view of the law laid down in ***Satendra Kumar Antil Vs. Central Bureau of Investigation and Another, (2021) 10 SCC 773***, protection was also granted for the period of 15 days. In pursuance of that order the applicant had appeared before the court below and applied for bail and he was also released on bail. Thereafter, the applicant also participated in trial but because of his illness, he could not appear before the court

on 19.09.2024 on that date applicant's counsel filed the adjournment application to adjourn the case considering his illness, which was allowed by the court below and directed the parties to appear before the court on 29.09.2024 for recording the statement on the charge. The case was again listed on 28.10.2024 and 04.11.2024, neither the accused nor the complainant appeared before the court below on that date. Lastly the matter was posted on 18.11.2024, on that date, an adjournment application was filed by the applicant on the ground of his illness, which was rejected by the court below on the ground that the application is not supported by any affidavit and impugned non-bailable warrant has been issued. It is further submitted that he had already obtained bail and wants to participate in the trial. Applicant may be permitted to participate in the trial through his counsel under Section 205 Cr.P.C. by exempting his personal appearance.

4. However, learned A.G.A. has opposed the prayer on the ground that after obtaining the bail, the applicant did not appear before the court below for that reason, non-bailable warrant was rightly issued against him, therefore, no interference was called for.

5. Before considering the present case on merit, it would be appropriate to mention that this Court has flooded with a number of cases wherein direction was sought by the accused to grant them limited protection to appear before the court below so that they can move an application to recall of NBW or may apply for fresh bail, especially in those cases where the applicants have already been released on bail, but subsequently, because of certain reasons which include illness, they could not appear before the court below and or their adjournment application has been rejected by the court below, and non bailable warrant has been issued against them for ensuring their presence before the court concerned.

6. The proceeding under Section 138 N.I. Act is summary in nature except in those cases where the court directs explicitly to conduct the proceeding as per the procedure of summons case. Section 145 N.I. Act also permits the complainant to give evidence on affidavit, therefore, the purpose of proceeding under N.I. Act is to summarily conclude the trial that does not require a personal appearance at every stage, and in appropriate cases concerned court may exempt the personal appearance of the accused under Section 205 Cr.P.C. so that proceedings may be continued by his pleader instead of adjourning the same so as to conclude the trial under N.I. Act expeditiously.

7. For reference, Section 205 Cr.P.C. is being quoted as under:-

"205. Magistrate may dispense with personal attendance of accused.-

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided."

8. The Apex Court in the case of ***M/s. Bhasker Industries Ltd. Vs. M/s. Bhiwani Denim Apparels Ltd. and others 2001 (7) SCC 401***, observed that the Magistrate can allow an accused to make even first appearance through counsel in appropriate cases and further observed that the plea of the accused under Section 251 Cr.P.C. can be recorded either in personal attendance of the accused or through his Advocate.

9. Paragraph 16, 17, 18, 19 of ***M/s. Bhasker Industries Ltd. (supra)*** are being quoted as under:-

"16. Section 251 is the commencing provision in Chapter XX of the Code which deals with trial of summons cases by Magistrates. It enjoins on the

court to ask the accused whether he pleads guilty when the “accused appears or is brought before the Magistrate”. The appearance envisaged therein can either be by personal attendance of the accused or through his advocate. This can be understood from Section 205(1) of the Code which says that:

“205. (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.”

17. Thus, in appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel. The Magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, one precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses.

18. A question could legitimately be asked — what might happen if the counsel engaged by the accused (whose personal appearance is dispensed with) does not appear or that the counsel does not cooperate in proceeding with the case? We may point out that the legislature has taken care of such eventualities. Section 205(2) says that the Magistrate can in his discretion direct the personal attendance of the accused at any stage of the proceedings. The last limb of Section 317(1) confers a discretion on the Magistrate to direct the personal attendance of the accused at any subsequent stage of the proceedings. He can even resort to other steps for enforcing such attendance.

19. The position, therefore, boils down to this: it is within the powers of a Magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of

such proceedings in a summons case, if the Magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations on him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the Magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the Magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course. We may reiterate that when an accused makes an application to a Magistrate through his duly authorised counsel praying for affording the benefit of his personal presence being dispensed with the Magistrate can consider all aspects and pass appropriate orders thereon before proceeding further."

10. The Apex Court in the case of **TGN Kumar Vs. State of Kerela and others 2011 (2) SCC 772**, further reaffirmed judgment of **M/s. Bhaskar Industries Ltd. (supra)** and observed that the discretion to exempt the personal presence under Section 205 Cr.P.C. should be left to the concerned Magistrate. In the case of TGN Kumar, the Apex Court also observed that if the personal attendance of the accused has been exempted under Section 205 Cr.P.C. in summons case, then the personal appearance of the accused can also be dispensed with at the stage of examination of the accused under Section 313 Cr.P.C.

11. Paragraph 8, 9, 10, 11, 17 and 19 of the **TGN Kumar' case (supra)** are being quoted as under:-.

8. The section confers a discretion on the court to exempt an accused from personal appearance till such time his appearance is considered by the court to be not necessary during the trial. It is manifest from a plain reading of the provision that while considering an application under Section 205 of the Code, the Magistrate has to bear in mind the nature of the case as also the conduct of the person summoned. He shall examine whether any useful purpose would be served by requiring the personal attendance of the accused or whether the progress of the trial is likely to be hampered on account of his

absence. (See *S.V. Muzumdar v. Gujarat State Fertilizer Co. Ltd.* [(2005) 4 SCC 173 : 2005 SCC (Cri) 1020] , SCC p. 177, para 13.) Therefore, the satisfaction whether or not an accused deserves to be exempted from personal attendance has to be of the Magistrate, who is the master of the court insofar as the progress of the trial is concerned and none else.

9. In *Bhaskar Industries Ltd.* [(2001) 7 SCC 401 : 2001 SCC (Cri) 1254] this Court had laid down the following guidelines, which are to be borne in mind while dealing with an application seeking dispensation with the personal appearance of an accused in a case under Section 138 of the NI Act: (SCC p. 408, para 19)

“19. ... it is within the powers of a Magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the Magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations on him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the Magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the Magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course.”

10. We respectfully concur with the above guidelines and while reaffirming the same, we would add that the order of the Magistrate should be such which does not result in unnecessary harassment to the accused and at the same time does not cause any prejudice to the complainant. The court must ensure that the exemption from personal appearance granted to an accused is not abused to delay the trial.

11. In the light of the aforeextracted legal principles, the impugned order is clearly erroneous inasmuch as the discretion of the Magistrate under Section 205 of the Code cannot be circumscribed by laying down any general directions in that behalf. In *Manoj Narain Agrawal v. Shashi Agrawal* [(2009) 6 SCC 385 : (2009) 2 SCC (Cri) 1096] this Court, while observing that the High Court cannot lay down directions for the exercise of discretion by the Magistrate under Section 205 of the Code, had echoed the following views:

(SCC p. 397, para 42)

“42. ... Similarly, the High Court should not have, for all intent and purport, issued the direction for grant of exemption from personal appearance. Such a matter undoubtedly shall be left for the consideration before the learned Magistrate. We are sure that the Magistrate would exercise his jurisdiction in a fair and judicious manner.”

17. On the plain language of Section 313, it is evident that in a summons case, when the personal appearance of the accused has been dispensed with under Section 205 of the Code, a discretion is vested in the Magistrate to dispense with the rigour of personal examination of the accused under Section 313 of the Code as well.

19. It is manifest from the aforeextracted passage that dispensation with the personal examination of an accused in terms of the said provision is within the trial court's discretion, to be exercised keeping in view certain parameters, enumerated therein and not as a matter of course.”

12. In a recent judgment of ***Sharif Ahmad and another Vs. State of U.P. and another, 2024 SCC online SC 726***, the Apex Court has observed that the application for exemption from personal appearance under Section 205 Cr.P.C. is maintainable even before filing the bail application. It was further observed that the Magistrate may dispense with the personal attendance of the accused, even while issuing summons and allow him to appear through his pleader.

13. Paragraph 47 of ***Sharif Ahmad's case (supra)*** is quoted as follows:-

“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."

14. From the above analysis, it is clear that in the proceeding under Section 138 N.I. Act personal appearance of the accused can be exempted by the concerned Magistrate under Section 205 Cr.P.C. and permit him to appear through his counsel. Even at the stage under Section 251 Cr.P.C. where it appears to the concerned court that due to a far distance (place of residence or business of the accused) or on account of physical or other good reasons, his personal appearance will cause enormous suffering to him. That the Magistrate can exempt the personal appearance of the accused at any stage of proceeding under Section 138 N.I. Act, even for taking evidence in his absence in the presence of his counsel, but such benefit should be given only to an accused who gives the following undertaking through an affidavit to the satisfaction of the court.

(i) He will not dispute his identity as a particular accused in the case;

(ii) A counsel on his behalf would be present in the court, and he has no objection to taking the evidence in his absence.

(iii) His counsel will cooperate in trial and will not take unnecessary adjournment.

15. However, this discretion is also left to the concerned

Magistrate that despite the exempt of the appearance of the accused under Section 205 Cr.P.C., he can direct the personal appearance to the accused at any stage of the proceeding if the counsel of the accused does not appear or does not cooperate in the proceeding or for any other reason. The above direction does not mean that the concerned Magistrate is duty-bound to exempt the personal appearance of the accused whenever he moves an application under Section 205 Cr.P.C., it is the discretion of the Magistrate to decide the application under Section 205 Cr.P.C. on case-to-case basis for the reason mentioned above and also taking into mind that permitting the accused to appear through his counsel will expedite the proceeding under Section 138 N.I. Act.

16. Coming to the facts of the present case, this Court has already directed to decide the trial of complaint case no. 557/2021 vide order dated 18.07.2023 in Application U/S 482 No. 25563/2023, the present application is **disposed of** with a direction to the applicant to appear before the court below within three weeks and apply for bail, and the same shall be considered in view of law laid down by the Apex Court in the case of *Satendra Kumar Antil Vs. Central Bureau of Investigation and Another, (2021) 10 SCC 773*. The applicant may also file an application under Section 205 Cr.P.C. permitting the applicant to appear through his counsel, which shall be considered as per the observation of this Court made here-in-above.

17. For a period of three weeks or till the disposal of the aforesaid application, whichever is earlier, no coercive action shall be taken against the applicant in the aforesaid case.

Order Date :- 6.2.2025

Sharad/-