

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 31-01-2018****Order delivered on 01-02-2018****CRMP No. 62 of 2018**

1. Ved Prakash Gupta @ Gudda S/o Rajendra Prasad Gupta, Aged About 46 Years R/o Polsai Para, Durg, Tahsil And District Durg, Chhattisgarh, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The District Magistrate, Durg, District Durg, Chhattisgarh, Chhattisgarh

---- Respondent

Appearance :

Shri P.K.C. Tiwari, Sr. Advocate, Shri Rajeev Shrivastava, Shri Prabhakar Singh Chandel, Shri Sanjay Sharma, Shri Shailendra Dubey, Shri C.K. Kesharwani, Shri Shailendra Bajpai, Shri Amarnath Pandey, Shri Y.C. Sharma, Shri S.C. Verma, Shri B.P. Singh, Shri Alok Kumar Gupta, Shri Chandra Shekhar Bajpai, Shri Uttam Pandey, Shri Gautam Khetrapal, Shri Jitendra Shrivastava, Shri Vivek Shrivastava, Shri Anurag Jha, Shri Ashish Gupta, Shri Ashutosh Trivedi, Shri Sanjay Patel, Shri Achyut Tiwari, Shri Kripesh Kela, Shri H.S. Ahulwalia, Shri A.K. Yadav, Shri Vikas Pandey, Shri Gagan Tiwari, Shri Malay Shrivastava, Shri Ravi Bhagat, Ms. Shiksha Verma, Shri Pramod Shrivastava, Shri Shakti Raj Sinha, Shri Pravin Kumar Tulsyan and Shri Vikash Shrivastava, Advocates.

Shri Ashish Shukla & Shri Ramaknat Mishra, Dy. Adv. Generals for the State.

C A V Order**By****Prashant Kumar Mishra, J.**

1. This CRMP is a reference registered on the basis of Paper Under Disposal (PUD) dated 10.01.2018 sent by the District & Sessions Judge, Bilaspur, seeking guidelines on certain difficulties faced by the trial Judges in complying with the directions issued by this Court in its order dated 05.01.2018 passed in MCRC No. 3957 of 2017 (**Ved Prakash Gupta @ Gudda v. State of Chhattisgarh**).
2. In the subject order of this Court the applicant - Ved Prakash Gupta @ Gudda stood surety in the Court of Special Judge, Durg, by impersonating Neelkanth, S/o Sukul Das, resident of village Indavani, however, when the concerned Court sent the papers for verification, the concerned Tahsildar submitted a report that no such person in the name of Neelkanth resides at village Indavani. Thereafter, the Court Mohrir Constable Parsh Nath lodged a report against the applicant for offence punishable under Sections 420, 467, 468, 471 & 120-B of the Indian Penal Code. In the inquiry it was found that the applicant is working as an Advocate's Clerk and has engaged himself in the fraudulent activity by standing surety by affixing his photograph in the property papers of other persons, one of which is Neelkanth, S/o Sukul Das.
3. In course of hearing of bail application, learned counsel appearing for the State brought to the notice of this Court that presentation of forged sureties to obtain bail and release order on the basis of forged revenue papers or by impersonating the real surety is frequent, therefore, the menace is required to be controlled and regulated before it reaches enormous proportion. Learned State counsel prayed to this Court to pass necessary orders directing the trial Courts to ensure obtaining papers of identification at the time of approving the surety documents for issuing the release warrants.
4. This Court, thereafter, referred to the decision of the Supreme Court rendered in **Binoy Viswam v. Union of India and others**¹, and issued directions which are contained in para 10 of the order dated 05.01.2018 in the following manner:

¹ (2017) 7 SCC 59

- I) While examining the surety papers the trial Court shall necessarily obtain copy of the Aadhaar Card of the accused as well as of the surety.
- II) The Aadhaar Card of the accused and the surety as well as genuineness of the revenue papers shall be verified by all the trial Courts, as soon as the same are furnished, preferably within a period of one week from the date of its submission.
- III) The release warrant shall be issued only after proper verification of the identity of the accused and the surety as well as the genuineness of the revenue/surety papers.
- IV) In the event the revenue/surety papers or the Aadhaar Card is found to be forged, the concerned trial Court shall forthwith lodge an FIR (First Information Report) against the person who submitted the papers/Aadhaar details.
- V) The concerned District & Sessions Judge shall maintain a register/database in electronic form containing the case No., crime No., particulars of the accused, details of the Police Station, particulars of the person who has stood surety for the accused therein, the details of the property against which the surety is based, etc.
- VI) If a particular surety is found to have stood surety in many cases on the basis of same property papers, the same shall be rejected, if it is involved in more than two cases.
- VII) The concerned Revenue Officer and the Station House Officer shall cooperate with the trial Court in course of verification of revenue/surety papers as well as the Aadhaar details of the accused and the surety.

VIII) All the trial Courts shall meticulously follow these directions and shall certify in the order sheet of the respective case that “the verification of papers has been done in accordance with the order passed by the High Court of Chhattisgarh in M.Cr.C No. 3957 of 2017 (Ved Prakash Gupta @ Gudda v. State of Chhattisgarh)”.

IX) If such certification is not made by the trial Court, disciplinary action may be initiated against the erring Presiding Officer.

5. When the Office reference was posted for orders on 11.01.2018, this Court felt that the difficulties projected by the District & Sessions, Judge, Bilaspur, appears to be genuine and needs to be addressed particularly in view of the fact that the issue pertains to sanctity of judicial system, which is required to be balanced having regard to the practical difficulties.
6. Considering the general importance of the matter, this Court required the Advocate General, the Chairman, State Bar Council and the President High Court Bar Association or any other counsel, who is desirous, to assist this Court.
7. On the next dates Shri P.K.C. Tiwari, Senior Advocate, Shri Prabhakar Singh Chandel, Chairman, State Bar Council, Shri C.K. Kesharwani, President, High Court Bar Association and Shri Chandrashekar Bajpai, President, District Bar Association, Bilaspur, appeared and informed that SLP (Criminal) No.1481 of 2018 has already been preferred before the Supreme Court in the matter of **Peeyush Bhatia v. The State of Chhattisgarh and another** challenging the directions issued by this Court. On this, the matter was adjourned awaiting hearing before the Supreme Court. The above SLP in the matter of **Peeyush Bhatia** (supra) was disposed of by the Supreme Court on 25.1.2018 in the following manner :

ORDER

Permission to file the special leave petition is granted.

We have been apprised by the learned counsel appearing for the Chhattisgarh Bar Council that it has filed an application for modification of the directions issued by the High Court in paragraph 10 of the impugned order.

In view of the aforesaid, we would request the High Court to deal with the application as per law within a span of ten days hence.

The special leave petition is disposed of accordingly.

8. In view of the above order of the Supreme Court, this Court heard learned counsel for the parties on three consecutive hearings.
9. Shri P.K.C. Tiwari, learned Senior counsel appearing for the State Bar Council, would refer to the Rules 383 & 378 of the Chhattisgarh Rules & Orders (Criminal) to submit that satisfaction and acceptance of surety as solvent for the required amount is primarily in the domain of the Presiding Officer, therefore, there being sufficient guidelines available, no direction is needed. Learned Senior counsel would also submit that instead of issuing directions, it would be appropriate to amend the Rules & Orders (Criminal). He would also submit that submission of Aadhaar Card for the purpose of identification of accused or the surety may not be made mandatory.
10. Shri Shailendra Bajpai, learned counsel and Library Secretary of the High Court Bar Association, would submit that the condition contained in para 10.6 of the order dated 05.01.2018 barring a person from standing surety in not more than two cases should be deleted because there are cases where several villagers are involved in one case and the amount of surety sought for by the Court while directing their release on bail is not much, therefore, one land owner having big chunk of land can stand surety for fellow

villagers. This will also save time for verification of the surety papers.

11. Shri C.K. Kesharwani, learned President, High Court Bar Association, would submit that submission of Aadhaar Card may not be made mandatory and the limit of surety in not more than two cases should also be deleted.
12. Shri Rajeev Shrivastava and Shri Y.C. Sharma, learned counsel appearing for the District Bar Association, would draw attention of the Court to sections 441 (4) and 441-A of the Code of Criminal Procedure, 1973 (henceforth 'the Code') to submit that enough guidelines are already provided in the Code, therefore, submission of Aadhaar Card may not be made mandatory and the identification of accused or the surety can be directed by obtaining other proof of identity like Voter ID, Passport, PAN Card, etc.
13. Shri S.C. Verma, learned counsel would submit that the process of verification may be directed to be made even before the bail order is issued. This would save time and ensure release of the accused immediately after the bail orders are passed by the trial Court, Sessions Court or the High Court, as the case may be. Shri Verma, would further submit that submission of Aadhaar Card has rightly been made mandatory, however, he would seek direction for immediate preparation of Aadhaar Card of such accused and/or surety, who is not possessed of Aadhaar Card. Shri Verma, would next submit that direction for lodging of FIR against the person who has submitted forged revenue papers or imposters is creating pressure on the trial Court, therefore, such direction deserves to be omitted. While praying for modification, Shri Verma has also made a contrary submission by referring to Sections 362 & 482 of the Code to suggest that modification may amount to review of the previous order, however, in the next breath, he would refer to Section 483 of the Code which provides for High Court's power of Superintendence over the Judicial Magistrates.

14. Shri Sanjay Sharma, learned counsel representing the District Bar Association, Raipur, would submit that the directions issued by this Court is unnecessarily delaying releasing of the accused persons from Jail, therefore, it needs to be appropriately modified in the interest of justice.
15. Shri B.P. Singh, learned counsel would argue that in order to eliminate the practice of submission of fictitious surety in form of person or paper, the Courts should be directed to demand cash surety wherever the amount is less. He would also submit that Aadhaar Card may not be made mandatory till the issue concerning the validity of Aadhaar Card is pending before the Supreme Court.
16. Shri Amarnath Pandey, learned counsel has urged that the directions issued by this Court amounts to enacting a law, therefore, since the relevant provisions of the Code already takes care of submission of surety and its verification, no further direction is needed. Shri Pandey, would further submit that there should be no requirement of submission of Aadhaar Card for release of the accused from Jail or for verification of the surety.
17. Learned counsels, who have suggested modification, have made a common pitch for immediate release of the accused after submission of surety papers making the process of verification subsequent to the release within a particular time frame.
18. Shri Ashish Shukla, learned Deputy Advocate General, would inform that out of 3200 inmates in Central Jail, Bilaspur, Aadhaar Card of 2481 inmates have already been prepared and regular camp for preparation of Aadhaar Card is held at short intervals in all the Jails of State, therefore, there is absolutely no difficulty in preparation of Aadhaar Card, however, Shri Shukla would fairly submit that where a person standing surety is the blood relative or near relative of the accused the verification of the papers submitted by them may not be made mandatory. He would submit that in almost all District Courts, the Court Readers are aware of the unscrupulous elements, who are

engaged in the profession of arranging surety, which may be found forged on occasions, therefore, the verification may be made compulsory where the Presiding Officer smells foul play about the person or the papers or where the accused belongs to other District or out of the State.

19. Having heard the learned counsels in *extenso*, it appears, what is sought to be revisited in this reference is not the Judgment or Order in that sense of the term, which is used in Section 362 of the Code. A Judgment is not defined in the Code. It is a word of general import and means only "judicial determination or decision of a Court" (See: **The State of Bihar v. Ram Naresh Pandey & Another²**).
20. While issuing a direction, this Court was not deciding the case in respect of issuance of direction. The Judgment in the matter of Ved Prakash Gupta @ Gudda is an order whereby he has been released on bail. The later part contained in para 10 whereby this Court has issued directions is neither a judgment nor a final order determining the trial by convicting or acquitting a person nor was it a final order in respect of an issue in the trial.
21. In **Bhedu Tatma and Others v. Hari Jha³**, it is held that an error has to be corrected and the High Court can make that correction upon the reference made by the Sessions Judge even though an application filed in the High Court in its revisional jurisdiction by the convicted person has been dismissed earlier in *limine*. In the said matter the Patna High Court relied on AIR 1925 Madras 993 (Vol.12).
22. In **Shaukat Ali Khan v. The State of Punjab⁴** the High Court was considering the issue pertaining to recalling of its earlier order refusing exemption from personal appearance and in the said context it was held that the orders sought to be recalled is not a judgment and the same could be recalled without involving any

2 AIR 1957 SC 389

3 AIR 1958 Patna 35

4 AIR 1960 Punjab 565

considerations relating to review of a judgment in criminal cases.

23. In **State of Punjab v. Deepak Mattu**⁵, the Supreme Court has observed that there is no impediment for the High Court, which comes on its way not to correct an apparent error. Section 362 of the Code of Criminal Procedure is only operative in a situation where a final order has been passed.
24. As observed in the preceding paragraphs, a judgment or final order is one which ends the trial or appeal or revision in conviction or acquittal or some other order passed in course of trial, which is considered to be final at that stage of the trial.
25. It has been argued that the process of verification of revenue papers is unnecessarily involving the agency outside the set up of the Criminal Justice System, therefore, verification of revenue papers is not legally appropriate.
26. To answer the above submission, it would be apt to refer the observation made by the Andhra Pradesh High Court, in **G. Venkat Ram Reddy v. The State**⁶ wherein it is observed, referring to sub-section (4) of Section 441 of the Code that when the Court is not satisfied about the sufficiency of the surety, it is incumbent on the Court to hold enquiry. Perusal of affidavit does not amount to conducting enquiry.
27. The Supreme Court, through Krishna Iyer, J., in **Moti Ram and Others v. State of Madhya Pradesh**⁷ observed that 'the best guarantee of presence in Court is reach of the law not the money tag'. Reach of law can be ensured by verification and not the amount for which the surety stands. Verification of property papers cannot be made by the Court as it has no paraphernalia for the said purpose. To protect the sanctity of the judicial system; to avoid fraud

⁵ 2007 AIR SCW 6056

⁶ 1990 Cri.L.J. 2741 (Andhra Pradesh High Court)

⁷ (1978) 4 SCC 47

being played on the Court by presentation of forged revenue papers or sureties, if some other agency is involved that would not amount to surrendering its own jurisdiction by conferring power to some other agency. The authority to determine the sufficiency of the surety would always lay in the hands of the Presiding Officer. The revenue authorities would only aid to the cause of maintaining sanctity of the criminal justice system.

28. The whole object of execution of bonds or sureties is to secure the presence of a person facing trial. In accepting or rejecting a surety, the Court has to see that the sureties or persons are sufficient financial ability, and of sufficient vigilance to secure the appearance and prevent absconding of the accused. Such an obligation of vigilance cannot be left to the mercy of a person who is not genuine in himself or the papers submitted to project is sufficient financial ability. An enquiry contemplated under Section 441 (4) is still conducted by the Presiding Officer, the process of verification being part of that enquiry summoning a report about the genuineness of revenue papers would not amount to handover the power of enquiry to the revenue officer. He will only certify the genuineness of the revenue papers and nothing more.
29. Turning back to the issue of mandatory submission of Aadhaar Card of accused and surety, this Court is convinced with the submission made by the majority of the learned counsel that till the issue concerning validity of the instrument of Aadhaar itself is under consideration by the Supreme Court, submission of Aadhaar Card may not be made mandatory. Objection has also been raised to the condition where this Court has put a bar that one surety cannot stand in more than two cases. On this aspect, Section 441-A as introduced by Act No.25 of 2005 w.e.f. 23.6.2006 needs reference, which provides that every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.

30. The legal mandate and intent is, thus, writ large that whenever a person stands surety for large number of persons or accused, it may be difficult for him to keep vigilance to produce them in the Court as and when required. It may be true that in exceptional cases the Presiding Officer may allow a person to stand surety in more than two cases, but in the garb of allowing this to happen, professionals who are in the vocation of standing surety should not be allowed to enter the Court premises. Therefore, while the bar of standing surety in not more than two cases may not remain, however, the Presiding Officer shall strictly follow the provisions under Section 441-A of the Code.
31. It has been brought to the notice of this Court that the process of verification is taking too long thereby violating the accused's fundamental right to be set at liberty after the order for his release on bail has been passed by the competent Court. The suggestion, therefore, to the effect that process of verification may be made subsequent to the release of the accused on bail appears to be fully justified and worth acceptance.
32. In so far as the submission for lodging the FIR against the person who has submitted papers or has impersonated while submitting surety, suffice it would be to observe that a person who pollutes the sanctity of justice delivery system should not be spared. The apprehension that minor discrepancy in the revenue papers making the surety unsatisfactory would also attract lodging of FIR is wholly ill founded because the Presiding Officer would proceed to lodge FIR only in cases where the documents are found forged and not in cases where the document may not be found acceptable for some technical reason, but the document itself is not forged.
33. In view of the above discussion, this Court issues the following directions in substitution of the previous directions issued in paragraph 10 of the order dated 5.1.2018 passed in M.Cr.C.No.3957 of 2017 :

- (i) While examining the surety papers, the trial Court shall obtain documents of identification like Aadhaar Card or Voter ID or PAN card or Passport of the surety.
- (ii) The identification of the accused may be established by the prosecution, which may form part of the police case diary or the charge sheet.
- (iii) Upon submission of proof of identity and the revenue papers by the surety, the same shall be got verified by the trial Court within a period of four weeks from the date of submission, however, the provisional release warrant of the accused may be issued by the Presiding Officer even before verification, upon its, *prima facie*, satisfaction of the genuineness of the documents.
- (iv) Based upon the outcome of the verification process the Presiding Officer may pass appropriate necessary orders after four weeks.
- (v) In the event the revenue/surety papers or the document of identification of the surety is found to be forged, the concerned trial Court shall forthwith lodge FIR against the surety who submitted the forged documents.
- (vi) The concerned District & Sessions Judge shall maintain a register/database in electronic form containing the case No., crime No., particulars of the accused, details of the Police Station, particulars of the person who has stood surety for the accused therein, the details of the property against which the surety is based, etc.
- (vii) The concerned Revenue Officer and the Station House Officer shall cooperate with the trial Court in course of verification of revenue papers. In such Tahsils or Districts where the revenue entries have already been made in the *Bhuiyan* Software of the State

Government's Revenue Department, the verification may be made through the said Software.

(viii) After completion of the process of verification the Presiding Officer shall certify in the order sheet of the case that the verification of the papers/documents has been done in accordance with the order passed by the High Court of Chhattisgarh on 1-2-2018 in Cr.M.P. No.62 of 2018 (Ved Prakash Gupta @ Gudda v. State of Chhattisgarh)". Any dereliction in ensuring verification by the trial Court may be viewed seriously.

(ix) The direction contained in this order shall not apply where the bail order has been granted to the accused for a limited period of less than 21 days, as the accused is required to surrender before the concerned Court immediately after expiry of the limited period of his release.

34. Registry is directed to forthwith circulate copy of this order to all the District & Session Judges of the State of Chhattisgarh, who shall further circulate the same to all the Judicial Officers within their respective jurisdictions. Copy of this order be also forwarded to all the Collectors-cum-District Magistrates and the Superintendent of Police of the State of Chhattisgarh, who shall further circulate the same to all the Station House Officers within their respective jurisdictions.

Sd/-

Judge
Prashant Kumar Mishra

Gowri