

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO.1339 OF 2017
WITH
CRIMINAL WRIT PETITION NO.1340 OF 2017
WITH
CRIMINAL WRIT PETITION NO.1341 OF 2017**

ALOK SHARMA AND OTHERS)...PETITIONERS

V/s.

THE STATE OF MAHARASHTRA AND ANR.)...RESPONDENTS

Mr.Manish Bohra i/b. A.S.Khan and Associates, Advocate for the
Petitioners.

Mr.A.R.Kapadnis, APP for the Respondent – State.

Mr.Lalit Katariya, Ms.Benedicta Lobo i/b. Katariya and Associates,
Advocate for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 23rd JANUARY 2020

ORAL JUDGMENT :

1 Rule. Rule is made returnable forthwith. Heard finally
with consent of parties.

2 Orders dated 19th December 2016 passed by the learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai, is challenged in these petitions. By the said orders, applications of petitioners/accused nos.5 to 7 for permanent exemption came to be granted but with a condition that they should furnish bail bonds within next three months.

3 Heard the learned counsel appearing for petitioners. By relying on judgment of the Hon'ble Apex Court in the matter of **Bhaskar Industries Ltd. vs. Bhiwandi Denim and Apparels Ltd. and Others**¹ he argued that in summons cases even a Magistrate can exempt personal appearance of the accused right from day one. To buttress this contention, reliance is also placed on **Mr.Bhaskar Sen vs. State of Maharashtra & Ors.**². In addition, it is argued that in other four cases wherein petitioners are accused, they are permanently exempted without asking them to furnish bail bonds.

4 As against this, the learned counsel for contesting

1 (2001) 7 Supreme Court Cases 401

2 2004 (4) ALL MR 606

respondent i.e. original complainant argued that cogent reasons are given by the learned trial Magistrate, as found in paragraph 6 of the impugned order, and therefore, no interference is required in the impugned order.

5 I have considered the submissions so advanced and also perused the impugned orders. In paragraph 17 of its judgment, the Hon'ble Apex Court in the matter of **Bhaskar Industries Ltd. (supra)** has observed thus :

“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.”

6 Bare perusal of this paragraph makes it clear that discretion is vested with the learned trial court in the matter of grant of exemption. In the cases in hand, following are the observations of the learned trial court made in paragraph 6 of the orders while deciding applications for grant of permanent exemption :

“6However it is pertinent to note that though the present case is triable by summons case or summary trial procedure then also I am of opinion that considering the cheque amount it can not be said that the present case is of petty nature. Moreover, before this court there are 4000 cases

U/sec. 138 of N.I.Act pending and in those cases there are several instances that even after furnishing bail and engaging advocate at the last movement of case i.e. at the point of final arguments Advocate who conducted the matter in absence of accused through out the trial filed no instructions pursis and in that circumstances atleast there is the security in the form of bail and bonds to penalise the accused by forfeiting the same. Here in the present case before me Ld. Advocate for accused No.5 to 7 claims permanent exemption without furnishing the bail, only on sole ground that the accused are resident of long distance but as per my opinion this ground is not at all satisfactory to dispense the accused from furnishing bail and bonds. According to law, bail and bonds are taken only for the security of appearance of the accused as and when called and without such security I am of view that accused in this case are not at all entitled to get exemption from furnishing bail-bonds. However, considering undertakings of accused on record of this case and assurance of advocate for the accused I am of the view that if Advocate for accused records plea on next date on behalf of accused as per the undertaking and agrees to submit bail application

and furnishes the same within 3 months then on these conditions permanent exemption of accused No.5 to 7 can be approved or granted.”

7 I am of the considered opinion that discretionary orders came to be passed by the learned Magistrate by exercising his jurisdiction in terms of law. It cannot be said that exercise of discretion by the learned trial court in these matters is arbitrary or capricious. Cogent reasons are recorded for directing petitioners/ accused persons to furnish bail bonds while granting their prayer for permanent exemption.

8 No fault can be found in the decision making process of the learned trial Magistrate. The impugned orders are neither perverse nor illegal. Hence, the following order :

ORDER

- i) The petitions are dismissed.
- ii) Rule is discharged.

**Arti V.
Khatate**

(A. M. BADAR, J.)