

24.02.2021
Item no.4
Ct. No.42
CHC

**C.R.R. No.155 of 2021
(Physical Hearing)**

In Re: An application under Section 397 of the Code of Criminal Procedure.

In the matter of:-

Md. Salam @ Parvez
.....petitioner

Mr. Sourav Chatterjee
... for the petitioner

Mr. Saswata Gopal Mukherji, Ld. P.P.
Mr. Madhusudan Sur, Ld. A.P.P.
Md. Anwar Hossain
...for the State

The impugned order dated 7th January, 2021 passed by the learned Senior Municipal Magistrate, Calcutta in Case No.1094 of 2018 refusing to deliver judgement even in absence of the accused person namely, Md. Salam @ Parvez for his medical ground, who has been suffering from spine problem, is subject of challenge in this case.

The copy of this application is asked to be handed over to Mr. Mukherji, learned Public Prosecutor, who is present in Court.

Mr. Mukherji, learned P.P. representing the State submits that though there is provision contained in the Code of Criminal Procedure, when the learned Magistrate can deliver judgement

without securing presence of the accused person, but it is for the learned Magistrate to be convinced upon visualizing the medical documents produced by the petitioner in justification of the extent of the illness suffered by the petitioner.

Learned advocate for the petitioner submits that since the petitioner is suffering from serious illness for his spine problem, he is not in a position to ensure his appearance on the date so fixed for delivery of judgement.

It reveals further from the impugned order that Warrant of Arrest has been issued against another accused person namely, Md. Murshid @ Badsha.

According to the petitioner the learned court below has already fixed the next date i.e. on 21st April, 2021 for obtaining the execution report in connection with Warrant of Arrest, issued against another accused person.

Having considered the rival submission of parties, it appears that learned court below has not issued any Warrant of Arrest against the petitioner and the learned court below has only passed a direction requiring the petitioner to ensure his appearance on the date fixed.

There is a detailed provision contained in Section 353 Cr.P.C., when in an appropriate case Magistrate may deliver judgement dispensing with the personal appearance of accused person upon considering the facts and circumstances, to be presented before the court below in a particular case. The Magistrate is thus provided with ample discretion to deliver judgement dispensing

with the personal appearance of the petitioner in an appropriate case.

Without going into the details, it is for the petitioner to establish the seriousness of the illness, if any suffered by the petitioner, which may justify invocation of the appropriate provision contained in Section 353 Cr.P.C. The Court is of the view that the revisional application may be disposed of so as to subserve the purpose of justice, as proposed to be obtained, giving direction mentioned as hereunder.

Petitioner is directed to furnish a fresh application before the learned court below supported by medical documents for due appreciation of the extent of illness suffered by the petitioner and upon consideration of which, the learned Magistrate will be obliged to exercise his discretion in accordance with the provisions of the law, and if any such application is filed, the same shall be disposed of in accordance with the provisions of the law.

With this direction/observation, the instant revisional application stands disposed of.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Subhasis Dasgupta, J.)

