

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1286 of 2023

Pradeep Kumar Varun

.. Petitioner

Versus

Union of India and Anr

.. Respondents

...

Ms.Medha Jondhale with Mr.Anand Jondhale, Rajnandini Jondhale, Harshvardhan Shinde and Upendra Pandey i/b Jondhale & Co. for the petitioner.

Mr.Harsh Dedhia i/b H.S. Venegaonkar for CBI respondent no.1.

Mr.Y.M. Nakhawa, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 26th APRIL 2023

P.C:-

1 Heard the learned counsel for the petitioner, learned counsel for the CBI, ACB, and learned APP for the State.

2 The Petition is filed by the petitioner, assailing the order dated 21/12/2022 passed by the Addl. Sessions Judge, in CBI Special Case No.46/2019, directing the applicant/accused no.3 to remain present before the Court on each and every date.

3 The above direction will have to be read with the order dated 29/11/2021 in the background.

Pertinent to note that the present petitioner, who was

arraigned as accused no.3 moved an application below Exhibit-58, for permanent exemption, wherein it was pleaded that the applicant is a senior citizen suffering from multiple ailments, Cancer and he is advised to undergo surgery and he has undergone the surgery. He reported that he was taking treatment in Noida and was also infected by Corona Virus, and hence, his physical condition had become weak, and he is unable to walk properly and carry out his daily movements. An exemption was sought from attending the proceedings on day-to-day basis, but specific undertaking was given that he shall remain present in the Court as and when required. Upon considering the say of the prosecution, the learned Judge recorded as under :-

“The accused undertakes that he will remain present as and when required by this Court. Considering this submission of the accused, this Court is of the opinion that no prejudice will be caused to prosecution if the exemption granted to accused no.3 till further order. Hence, the order:-

ORDER

- 1 *Application Exh.58 is partly allowed.*
- 2 *Personal attendance of accused no.3 Pradeep Kumar Varun is exempted till further order.”*

4 The learned counsel for the petitioner would submit that the applicant moved an application u/s.319 of Cr.P.C on 21/12/2022 seeking issuance of summons to Samriddhi, the Manager and R.K. Jain, Chief Manager, and it was prayed that

they should be arraigned as accused and charge-sheeted. While this application was pending, the Addl. Sessions Judge on 21/12/2022, recorded as under :-

“Advocate for Accused no.3 has filed application u/s. 319 Cr.P.C. Considering the circumstances available on record, accused no.3 is hereby directed to remain present on each and every date before the Court”

5 Evidently, no reasons are given for recalling the earlier direction issued on 29/11/2021, nor any justification is offered by the learned Judge as to the circumstances warranting recall of the earlier exemption order and directing the petitioner to remain present on each date for hearing. Learned counsel for the petitioner has invited my attention to an order passed by the learned Judge on 8/2/2023 below Exhibit-156 in application filed by accused u/s.319 of Cr.P.C. Though I am not required to go into the same, suffice it to note that while rejecting the application filed vide Exhibit-156, the learned Judge has also issued the following direction :-

“Applicant/accused no.3 Pradeep K. Varun, to remain present on 21/2/2023 for framing the charge”

6 The learned counsel state that pursuant to the said order, the petitioner remained present before the Court and the charge was framed.

7 Since no justification is found for passing of the order dated 21/12/2022, for recalling the order of permanent exemption, the said order is quashed and set aside. Needless to state that since the petitioner/accused no.3 has already undertaken that as and when directed, he shall remain present in the Court, liberty is conferred on the Court to secure his presence as and when required.

 In the wake of the above, by quashing the impugned order, Writ Petition is made absolute.

(SMT. BHARATI DANGRE, J.)