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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 20.12.2023+ **CRL.M.C. 2357/2022 & CRL.M.A. 9961/2022****DR. ANBUMANI RAMADOSS**

..... Petitioner

Through: Mr. Mukul Gupta, Senior
Advocate with Mr. Sumit
Kumar Mishra and Mr.
Parinay Gupta, Advocate

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Prasanta Varma, SPP with
Mr.Pankaj Kumar and Ms.
Pragya Verma, Advocates for
CBI.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.(ORAL)**

1. The instant petition under Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner, assailing the order dated 25.04.2022 passed by learned Special Judge (PC Act) (CBI)-09, Rouse Avenue Courts, New Delhi, in CC No. CBI/48/2019 titled as 'CBI vs Dr. Keshav Kumar Aggarwal & Ors.' arising out of RC-006/2010/A0014-SPE/ACB/Lucknow registered for offences punishable under Sections 120B/420/465/468/471 of Indian



Penal Code, 1860 ('IPC') and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 ('PC Act').

2. The facts, leading to the registration of present RC by the CBI, are that an information was received that some officials of Ministry of Health & Family Welfare, Government of India, New Delhi had entered into a criminal conspiracy with Sh. Keshav Kumar Agarwal who was the Chairman of Rohilkhand Medical College, Bareilly, Uttar Pradesh, and in pursuance of this conspiracy, the officials of Ministry had granted renewal of permission for admission of 100 MBBS students in the medical college. It was discovered by the CBI that *vide* letter dated 14.02.2006, the medical college had been granted permission by Ministry of Health & Family Welfare, Government of India for admission of its first batch of 100 MBBS students, for the year 2006-07. Thereafter, the permission was renewed for admission of its second batch on 17.08.2007, for the year 2007-08. However, in the year 2008-09, Medical Council of India had inspected the said medical college and had found that the college was not meeting the prescribed norms and had shortage of infrastructure faculty. It was discovered that members of its faculty were either not working there or were working at more than one place, simultaneously. It was also discovered that certain members of faculty had submitted false certificates of experience. The Medical Council of India had given the college, another chance to rectify the deficiencies, and an inspection was again conducted on 19.08.2008, but the same deficiencies persisted. Consequently, on 04.09.2008, the executive committee of Medical Council of India had communicated



to the Central Government to not renew the permission for admission of third batch of students in the college and the same was communicated to the college by the Government vide letter dated 12.09.2008. During this time, the said medical college had approached the Hon'ble Apex Court and during the course of hearing, the college had acknowledged that there were deficiencies but it had requested that the Government and the Medical Council of India may consider renewal for a reduced intake of students. On 24.09.2008, the Medical Council of India had furnished its recommendations on the said issue, informing the Government that as per the inspections carried out by the Medical Council of India, the available facilities of the medical college were not sufficient even for a reduced number of MBBS admissions. However, the Ministry of Health & Family Welfare, Government of India, New Delhi, had issued an order on 26.09.2008 according renewal of permission for admission of third batch of 100 MBBS students for years 2008-09 to the college, stating that an inspection was conducted by a Central Team, constituted by Ministry of Health & Family Welfare on 25.09.2008 which had noted that adequate facilities were available for renewal of such permission. It is alleged that the Ministry of Health & Family Welfare had deputed a Central Team on their own with *mala fide* intention, in order to obtain a favourable Inspection report and extend undue favour to the management of the said medical college, knowing fully well that the Medical Council of India had not found the college suitable for extension of permission. Another inspection was conducted by Medical Council of India on



01.10.2008, i.e. after a lapse of only five days and it was found that the shortage of teaching staff was 65.51%. Thus, allegedly, the officers of Ministry of Health & Family Welfare had connived with Shri Keshav Kumar Agarwal, Chairman, of the medical college and others, with ulterior motive in granting permission for the period 2008-09. Accordingly, the present RC was registered by the CBI.

3. Chargesheet in the present case was filed on 31.01.2013 against accused Dr. K.K. Agarwal, Chairman of Rohilkhand Education Trust, Bareilly (A-1), Dr K.Y.S.Rao, Deputy Secretary, Ministry of Health and Family Welfare (A-2), Dr. Ambumani Ramadoss, the then Union Minister of Health and Family Welfare (A-3), Dr. Vindu Amitabh (A-4) and Dr. S.K. Rasanina (A-5). Vide order dated 10.03.2014, the Hon'ble Supreme Court had transferred the trial of the present case to the Court of Special Judge, CBI, Patiala House Court, New Delhi. Charges were framed against accused no. 1, 2 and 3 vide order dated 07.10.2015 by the learned Special Judge, however, accused no. 4 and 5 were discharged.

4. The order on charge dated 07.10.2015 was challenged by accused no. 1, 2 and 3 as well as by the CBI against accused no. 4 and 5, and this Court, vide order dated 29.07.2019, had set aside the the order on charge dated 07.10.2015 passed by the learned Special Judge, and had directed the learned Special Judge to hear the parties on merit afresh after duly supplying the copy of videography, of inspection carried out by MCI on 20.10.2008 which was subsequently seized by CBI, to all the accused persons. Thereafter, the Hon'ble Apex Court vide judgment/order dated 27.07.2022 had



disposed off all the connected SLPs in relation to the present matter and had set-aside the order dated 29.07.2019 passed by this Court and remitted back all the matters to this Court for considering the matter afresh on merits and deciding it in accordance with law.

5. The challenge in this petition is, to the order dated 25.04.2022 passed by the learned Trial Court, wherein it was observed as under:

“...Another application seeking exemption from personal appearance of A-3 has also been moved in this case as well as in connected case bearing CC No.46/19 titled as CBI Vs. Dr. Ambumani Ramadoss & Ors. He was even not present on the previous date. The exemption is found to have been moved on vague grounds and simply because he is a resident of Chennai, it cannot be an excuse to justify his presence before this court on each and every date. However, still in the interests of justice and with a warning to the said accused in attending the court proceedings in future, his personal appearance for today has been exempted subject to a cost of Rs. 2,500/- in each of the case to be deposited in bank account bearing no. 31445437488 of the Delhi Legal Service Authority, Central District, being maintained at State Bank of India, Tis Hazari Court Branch, Delhi. The copy of deposit slip be filed in this court on next date...”

6. Learned Senior counsel for the petitioner argues that the learned Trial Court has erred in passing the impugned order whereby the application seeking exemption from personal appearance and permission to join through video conferencing was dismissed in a mechanical manner and without any application of judicial mind, and a cost of Rs. 2,500/- was imposed on the petitioner. It is contended that the Hon’ble Apex Court as well as this Court has directed that all the hearings must be conducted in hybrid mode and the learned Trial Court has failed to consider the same. It is submitted that it has been nowhere observed by the learned Trial Court that the presence of the



petitioner is required for proceeding with the matter, and the Court has failed to consider the principles governing the grant or refusal of personal exemption from appearance. It is submitted that the learned Trial Court in its order dated 04.03.2021 had observed that a fresh hearing on point of charge cannot be commenced as controversy regarding existence of a CD containing videography of inspection of the college involved in this case has yet not been settled and the matter is required to be adjourned, however, even then, the Court has been insisting upon the physical presence of the petitioner/accused before him. It is also stated that petitioner herein is a permanent resident of Chennai, Tamil Nadu, and he has elderly parents and grand-children to look after, and therefore, he be allowed to appear before the learned Trial Court through video-conferencing, and the impugned order be set aside.

7. Learned SPP for the CBI, on the other hand, submits that on 25.04.2022, the petitioner was not present before the learned Trial Court and had filed an application for exemption from personal appearance on erroneous ground, and the learned Trial Court had exempted his personal appearance for the said day, subject to a cost of Rs. 2,500/-. It is stated that present petition is filed with the sole aim of delaying proceedings before the learned Trial Court. It is further stated that if petitioner is permanently exempted from personal appearance, it would mean a stay on prosecution's case before learned Trial Court. It is stated that present petitioner has already been granted exemption on various dates by the learned Trial Court, and he has remained personally present only on 15 dates before



the learned Trial Court, most of which were attended through video conferencing. It is, therefore, prayed that present petition be dismissed and impugned order be upheld.

8. This Court has heard arguments advanced by learned Senior counsel for petitioner as well as learned SPP for the CBI, and has perused material available on record.

9. To put it briefly, the petitioner herein, by way of present petition prays that he be permitted to appear virtually, due to his permanent residence being in Tamil Nadu, before the learned Trial Court without any conditions, and the impugned order dated 25.04.2022 be set aside.

10. At the outset, this Court notes that the scheme of Cr.P.C., through Section 273, provides that as a general rule, all evidence presented during a trial must be taken in the presence of the accused. However, the Cr.P.C. also provides exceptions to this general rule, by virtue of Sections 205 and 317, which contain the law regarding exempting an accused from personal appearance. Sections 273, 205 and 317 of Cr.P.C. are reproduced hereunder for reference:

273. Evidence to be taken in presence of accused.

Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader. Explanation.- In this section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code..."

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.

317. Provision for inquiries and trial being held in the absence of accused in certain cases

(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct and the personal attendance of such accused.

(2) If the accused in any Such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn Such inquiry or trial, or order that the case of" such accused be taken up or tried separately..."

11. A perusal of the aforesaid provisions would reveal that Section 205 of Cr.P.C. empowers the Magistrate to dispense with the personal attendance of an accused right from the stage of commencement of proceedings before it, and Section 317 of Cr. P.C. confers power upon both the Magistrate as well as Sessions Judge to grant exemption from personal appearance to the accused at any stage of inquiry or trial. However, both these provisions also provide the power to the concerned Courts to later direct the personal attendance of the accused at any stage.



12. The Hon'ble Apex Court, in case of *Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd.*(2001) 7 SCC 401 and *Puneet Dalmia v. CBI* (2020) 12 SCC 695, had discussed the law on this issue. The relevant observations of Hon'ble Apex Court in *Bhaskar Industries Ltd.* (*supra*) in this regard read as under:

“14. The normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be present in the court, provided he has been granted exemption from attending the court. The concern of the criminal court should primarily be the administration of criminal justice. For that purpose the proceedings of the court in the case should register progress. Presence of the accused in the court is not for marking his attendance just for the sake of seeing him in the court. It is to enable the court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the court in that particular case.

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 co-operate in proceeding with the case? We may point out that the legislature has taken care for 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, bogs 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 to 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...”

(Emphasis supplied)

13. It is clear from an analysis of the decision of Hon’ble Apex Court that while exercising the discretion to exempt an accused from personal attendance, some important factors such as the nature of the allegations, the conduct of accused, his place of residence, the



distance to be travelled for the purpose of making personal appearance before the Court, the physical condition of accused, the necessity of making a personal appearance, etc., are to be considered, in a given set of facts and circumstances. The law also mandates imposing certain conditions while granting exemption to an accused.

14. It is, however, important to note that the petitioner herein has not sought a complete exemption from appearance before the learned Trial Court, but has only sought exemption from appearing physically on every date of hearing before the learned Trial Court and prays that he may be allowed to appear virtually.

15. This Bench, while adjudicating a similar issue in case of *S. Jaitley v. State (NCT of Delhi) 2023 SCC OnLine Del 5551*, had taken note of the policies of this Court regarding virtual hearings, and the relevant portion of this judgment is extracted hereunder for reference:

“VIRTUAL HEARINGS: COURT POLICIES & GUIDELINES

18. In the present case, however, the petitioner no. 1 has not sought total exemption from his personal appearance before the learned Trial Court, rather he has prayed for grant of exemption from physical appearance and allow him to appear virtually before the learned Trial Court on every date of hearing.

19. In this background, this Court takes note of the order dated 29.05.2023 passed by Hon'ble Division Bench of this Court, headed by the Hon'ble Chief Justice, in W.P. (C) 17194/2022, wherein it was observed as under:

“...3. This High Court has taken a policy decision to permit each & every individual to appear through virtual mode. There is no bar in the Petitioner addressing the Court virtually.



4. Resultantly, the application is allowed. The concerned Court/MM-7, North-West District is directed to permit each & every individual - who intends to appear virtually in Court, to appear through virtual mode, including the Petitioner herein.

5. Let the Registrar General communicate the Full Court decision - which permits individuals to appear virtually, to all the Metropolitan Magistrates and also to all District Courts...”

20. It will also be appropriate to reproduce the Office Order of this Court dated 05.06.2023, referred to by the petitioners in the instant petition. The same reads as under:

“HIGH COURT OF DELHI : NEW DELHI
OFFICE ORDER

No. 01/RG/DHC/2023

Dated : 05.06.2023

Sub: Directions regarding Hybrid Hearing in Delhi District Courts issued by the Hon'ble Full Court, High Court of Delhi.

In partial modification of the previous directions issued vide office order No. 2551/DHC/Gaz/G-2/2022 dated 11.05.2022 in respect of Hybrid Hearing in District Courts, it is informed that the Hon'ble Full Court, High Court of Delhi has been pleased to order that:

“..... that the District Courts in Delhi, **shall permit any of the parties and/or their counsel to appear through hybrid/videoconferencing mode during Court proceedings, without there being any requirement of a prior request for the same.**

The hearings shall be conducted in hybrid/video-conferencing mode in conformity with the High Court of Delhi Rules for Video Conferencing for Courts, 2021 and also bearing in mind the provisions of the Live Streaming and Recording of Court Proceedings Rules of the High Court of Delhi, 2022.

The judicial officers, while conducting hearings through hybrid/video-conferencing mode, shall ensure that in the categories of cases mentioned hereunder, no person other than the parties and counsel of a particular case, digitally accesses or joins the proceedings of that particular case:



- i. Matrimonial matters, child adoption and child custody including transfer petitions arising thereunder.
- ii. Cases concerning sexual offences, including proceedings instituted under Section 376, Penal Code, 1860 (IPC).
- iii. Cases concerning gender-based violence against women.
- iv. Matters registered under or involving the Protection of Children from Sexual Offences Act, 2012 (POCSO) and under the Juvenile Justice (Care and Protection of Children) Act, 2015.
- v. Matters registered under or involving the Medical Termination of Pregnancy Act, 1971.
- vi. In-camera proceedings as defined under Section 327 of the Criminal Procedure Code, 1973 (CrPC) or Section 153 8 or Order XXXIIA of the Civil Procedure Code, 1908 (CPC).
- vii. Matters where the bench is of the view, for reasons to be recorded in writing that publication would be antithetical to the administration of justice.
- viii. Cases, which in the opinion of the Bench, may provoke enmity amongst communities likely to result in a breach of law and order.
- ix. Recording of evidence, including cross-examination.
- x. Privileged communications between the parties and their advocates; cases where a claim of privilege is accepted by the Court; and non-public discussions between advocates.
- xi. Any other matter in which a specific direction is issued by the Court.

Further in a given case, the Court may for reasons to be recorded in writing, direct the parties and/or their Counsel to appear physically where in the opinion of the Court the physical presence of the parties/counsel in the court is required or where the court is otherwise of the opinion that the matter should be heard physically in the court.



The decision taken in the Full Court dated 25.04.2022 in this respect accordingly stands modified.

The Ld. Judicial Officers in all the District Courts are requested to strictly adhere to the aforesaid directions...”

(Emphasis supplied)

21. As revealed from a bare perusal of the aforesaid Office Order, it directs all the District Courts in Delhi to allow ‘any of the parties’ or their counsels to appear through ‘hybrid/video-conferencing mode’ during ‘any Court proceedings’ without there being any prior request made to the Court. The order further directs the judicial officers to ensure that while conducting the hearings through hybrid/virtual mode, only the concerned parties/counsels remain present in the Court through virtual mode in certain cases, which includes cases concerning sexual offences such as Section 376 of IPC. Thus, a joint reading of the Order reflects that it would undoubtedly apply to an accused who is facing criminal trial in a case involving charge under Section 376 of IPC. The Order, however, also clarifies that the Courts can also direct the parties or their counsel to appear physically if such presence is essential or where the Court is of the opinion that matter should be heard physically, and record reasons for such direction...”

16. In the present case, the petitioner is a permanent resident of Chennai, Tamil Nadu, whose family members including parents, children and grand-children reside in Tamil Nadu. The case at hand pertains to the year 2010, however, the charges have not yet been framed in this case and the trial has yet not commenced. While deciding the present petition, this Court also remains conscious of the fact that petitioner herein has not prayed for exemption from his personal appearance before the learned Trial Court, rather has only sought exemption from his ‘physical’ appearance before the Court.



17. Considering the aforesaid facts and circumstances, this Court is of the opinion that allowing the petitioner to appear before the learned Trial Court through virtual mode will not compromise the integrity or fairness of the trial

18. Thus, in view of the forgoing discussion, this Court is inclined to set aside the impugned order dated 25.04.2022 passed by learned Special Judge. In these circumstances, this Court directs as under:

- i. The petitioner shall remain present on every date of hearing virtually i.e. through Video-Conferencing before the learned Trial Court and counsel on behalf of petitioner will remain present physically before the Trial Court.
- ii. Only because the petitioner is appearing through Video-Conferencing, he will not dispute his identity during cross-examination, etc., or at any other stage of trial since he himself is seeking exemption from personal appearance in physical form, and requests that he be allowed to appear through Video-Conferencing.
- iii. The petitioner will not seek unnecessary adjournments before the learned Trial Court.
- iv. In case the learned Trial Court will be of the opinion that the physical presence of petitioner is essential, for reasons to be recorded in writing, such an order regarding the dates on which he will be required to appear in person before the learned Trial Court will be passed in presence of the learned counsel for petitioner or petitioner himself or anyone present on his behalf, at



least ten days prior to such date fixed for his appearance before the Court.

19. Accordingly, the present petition along with pending application stands disposed of in above terms.

20. A copy of this order be forwarded to the concerned Trial Court for information and compliance.

21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 20, 2023/zp