

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 5023 of 2023

Professor Bidyut Chakraborty
Versus
The State of West Bengal & Anr.

For the Petitioner : Mr. Rajdeep Mazumder, Adv.
Mr. Moyukh Mukherjee, Adv.
Mr. Pritam Roy, Adv.
Mr. Sayantan Sinha, Adv.
Ms. Sagnika Banerjee, Adv.

For the Opposite Party No. 2 : Mr. Subhamoy Bhattacharya, Adv.
Mr. Shankar Mukherjee, Adv.
Ms. Soumi Aich, Adv.

For the State : Mr. S. Banerjee, Adv.
Mr. Ashok Das, Adv.

Heard on : 15.01.2024

Judgment on : 18.01.2024

Ajay Kumar Gupta, J:

1. This instant revisional application has been filed by the petitioner under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 praying for setting aside the impugned order dated 05.12.2023 passed by the Learned Special Court under the Atrocity Act, 1st Court, Suri in connection with Special (A) 8 of 2023 arising out of Shantiniketan Police Station Case No. 89/2023 dated 05.07.2023 under Sections 500/120B/34 of the Indian Penal Code read with Sections 3(1)(r)(p)(s) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 now pending before the Learned Additional District Judge, 1st Court, Suri, Birbhum thereby a notice has been issued upon the petitioner to remain personally present before the Ld. Court on 19.01.2024 and the petition under Section 205 will be considered only on his appearance though the petitioner has filed an application under Section 205 of the Code of Criminal Procedure on 07.10.2023 seeking exemption of personal appearance and represented through his learned advocate.

FACTS OF THE CASE:

2. The brief facts leading to filing this criminal revisional application are that one Dr. Prashant Meshram lodged a written complaint against the present petitioner and others on 01.07.2023 alleging that the de-facto complainant experienced a worst humiliation in his service tenure at Visva Bharati University in a meeting dated 26.06.2023 conveyed at 11.30 a.m. inviting all the Joint Registrars, Deputy Registrars, Assistant Registrars and other senior officers of the University including the de-facto complainant and the said meeting was supposed to discuss administrative issues. Professor Bidyut Chakraborty, Vice-Chancellor of Visva Bharati University and Mahua Banerjee in-charge of Public Relation Officer first abused him for filing a complaint to the National Commission for Scheduled Castes and further uttered abusive remarks on his protest. He was not allowed to speak on such abuses and further identified all the officers belonged to Reserved Category by saying 'you are Scheduled Castes', 'you are OBC', 'you are Scheduled Tribes' etc. and directed his confidential Secretary not to allow any of the officers of these categories to call him on phone

3. It is further alleged that the accused Professor Bidyut Chakraborty, Vice-Chancellor, Visva Bharati University in collusion

with Ms. Mahua Banerjee, in-charge of Public Relation Officer gave false and fabricated information of his involvement of financial defalcation to the media intentionally to insult and humiliate him within public view resulted in irreparable damage of his reputation among the public and society and finally alleged that the Professor Bidyut Chakraborty and his associates severely damaged his service career, future prospect of his service and consequentially caused financial damages, damage of his reputation by making derogatory and mental agony and harassment etc. resulted in registration of Shantiniketan Police Station Case No. 89/2023 dated 05.07.2023 under Section 500 of the Indian Penal Code read with Sections 3(1)(r)(v)(p)(s) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the three accused persons namely, Professor Bidyut Chakraborty, Vice-Chancellor, Ms. Mahua Banerjee, in-charge of Public Relation Officer and Dr. Tanmay Nag, Deputy Registrar, Visva Bharati University. The said FIR was challenged in an another revisional application filed by the petitioner being CRR 2599/2023 seeking quashing of aforesaid proceeding. After hearing the parties, this Hon'ble High Court passed an interim order and directed not to take any coercive steps against the petitioners namely, Professor Bidyut Chakraborty, Ms. Mahua Banerjee and Dr. Tanmay

Nag though the investigation of the cases to be continued. The said interim order extended time to time and still in existence.

4. In the meantime, charge sheet No. 101/2023 under Sections 500/120B/34 IPC read with Section 3(1)(r)(p)(s) of the Scheduled Castes and Scheduled Tribes (POA) Act, 1989 has been submitted against all the above three accused persons. On 13.09.2023 the learned trial Court has taken cognizance and issued notice upon the accused persons and directed to appear before the learned trial Court on 13.10.2023 at 10.30 a.m. The prayer of IO for issuing warrant of arrest stands rejected. On 13.10.2023 the present petitioner was absent before the Ld. Court by filing petition through his learned advocate on the ground of his illness. Whereas, other two accused persons were present and their prayer for bail was allowed and released them on bail. The learned trial Court fixed another date of hearing of petition filed under Section 205 of the Cr.PC dated 07.10.2013 on 05.12.2023 and further directed the present petitioner to remain present positively on the date fixed.

5. On 05.12.2023, the petitioner, Professor Bidyut Chakraborty now retired from the Visva Bharati University could not appear before the learned Trial Court but file one supplementary affidavit in a main petition filed under Section 205 of the Cr.PC along with photocopy of

Aadhar Card, Medical Prescription dated 13.10.2023 but the said petition was not considered or disposed of by the learned Trial Court and further directed to appear before the learned trial Court on the next date i.e. on 19.01.2024 and the petition under Section 205 Cr.PC will be considered on his personal appearance.

6. Being aggrieved by and dissatisfied with the said impugned order for compelling or insisting him to appear before the learned Trial Court in spite of filing application under Section 205 of the CrPC on the ground that the petitioner herein resides in Delhi after his retirement far away from the learned trial Court, age is more than 60 years and on the ground of his illness though other two accused persons have already been exempted from personal appearance subject to certain conditions and disposed of their application. Hence, the instant revisional application.

SUBMISSION ON BEHALF OF THE PETITIONER:

7. Mr. Rajdeep Mazumder alongwith with other learned advocates appearing on behalf of the petitioner vehemently submitted that the learned Trial Court is trying to compel the accused person/petitioner to appear before the Ld. Trial Court personally though he has filed an application under Section 205 of CrPC seeking exemption of his personal appearance and to represent him through

his learned advocate. Several dates have been fixed by the Ld. trial Court but without disposing of the said petition compelling the petitioner to appear personally though the provision of Section 205 of the CrPC is very specific for exemption of accused person in the cases, if the petitioner able to satisfy sufficient grounds. Section 205 of Criminal Procedure Code confers a discretion on the Court to exempt an accused from personal appearance till such time his appearance is considered by the Court to be not necessary during the trial.

8. It is further submitted that the Ld. Trial Court cannot compel the petitioner to appear before the Ld. trial Court personally when there is an interim order not to take any coercive steps against the petitioner as well as in view of the judgment delivered in **Satender Kumar Antil Vs. Central Bureau of Investigation and Anr reported in (2022)10 SCC 51**. According to the said judgment, alleged offences in the present case fall in the category's 'A' i.e. offences punishable with imprisonment of 7 years or less not falling in categories B and D. When case falls within category 'A' even after filing charge sheet/complaint taking of cognizance, (a) a court ordinary issue summons at the first instance/ including permitting appearance through lawyer. (b) If such an accused does not appear

despite service of summons, then bailable warrant for physical appearance may be issued. (c) NBW on failure to appear despite issuance of the bailable warrant. (d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing. (e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

9. In the present case, the offence as alleged has maximum punishment for five years and with fine or both. During investigation, petitioner has co-operated during the course of investigation and also complied with the notice under Section 41A of the Cr.PC.

10. Apart from that, after retirement from service, the petitioner went to his residence at Delhi where he is living and his age is more than sixty years old and he is suffering from various ailments. Under such situation, the petitioner filed an application under Section 205 Cr.PC praying for exemption of personal appearance and represented through the learned advocate with an undertaking that petitioner will not dispute his identity and his advocate will represent him would

appear before the Ld. Court on the date fixed. It is further given undertaking that he shall not object the recording of the evidences in absence of the Petitioner.

11. But the said application is whimsically keeping pending without any sufficient reasons or grounds and furthermore, the Ld. trial Court compelling or insisting the petitioner to appear personally on the date fixed though it was apprised the Ld. trial Court the grounds for non-appearance of the petitioner on previous dates. But that petition was neither rejected nor allowed, which is totally against the law, when there is a provision for exemption of personal appearance and to represent through Ld. Advocate during trial subject to discretion of the Ld. trial Court that as and when necessary, Court may direct him to appear personally but it is kept pending with direction to appear personally and thereafter his petition would be considered without assigning any reason and passed cryptic order for personal appearance. Accordingly, the order for compelling the petitioner to appear personally is liable to be set aside and prays for direction may be passed to dispose of the application on merit in accordance with law.

12. It is further submitted that the learned trial Court can dispense with personal appearance of the accused and permit him to

appear by his pleader and this discretion may be exercised by the Ld. Court even in absence of the accused for exemption from personal attendance even at the stage of issuing summons by the Ld. Magistrate. The purpose of the Court to proceed with the trial and not to direct the presence of accused in Court for making his attendance just to see him or gather crowd in the Court. There is a discretionary power given under sub-Section (2) of Section 205 Cr.PC. Even if serious offences like Prevention of Corruption Act and even in warrant case, this discretion can be opted by the Ld. trial Court for dispensing with personal appearance of the accused subject to certain conditions i.e. whenever the Ld. trial Court deems it fit to direct to appear before the Court at any stage of the proceeding. There is no absolute right of the accused that he will never appear before the Court but without invoking the provision of Section 205 of the Cr.PC, Ld. trial Court is passing order for compelling personal appearance of the petitioner/accused, who is a senior citizen, respectable person in the society, residing in Delhi i.e. far away from the Ld. trial Court and suffering from various ailments. To bolster his contention, he has referred the judgments as follows:

i. Ajit Kumar Chakraborty and Others Vs. Serampore Municipality, 1988 SCC Online Cal 118;

ii. Bhaskar Industries Ltd. Vs. Bhiwani Denim & Apparels Ltd. & Ors., (2001) 7 SCC 401;

iii. Puneet Dalmia Vs. Central Bureau of Investigation, Hyderabad, (2020) 12 SCC 695;

iv. Suvendu Adhikari Vs. State of West Bengal, CRR 4545 of 2022;

v. Sunil Shah Vs. Union of India, Cr.M.P. No. 1164 of 2022 in the High Court of Jharkhand at Ranchi;

vi. Dr. Hemangini Meher Vs. Sangita Naik & Anr. in the High Court of Orissa at Cuttack, CRLA No. 1065 of 2023.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2:

13. Per contra, learned advocate appearing on behalf of the opposite party no. 2 submitted that other two accused persons had appeared and obtained bail though the present petitioner did not appear on several dates which have been fixed by the Ld. trial Court. He is not complying with the direction of the Ld. trial Court to be present before the Ld. Trial Court on the first instance and thereafter his prayer for exemption of personal appearance would be considered.

14. It is further submitted that the Ld. Trial Court has not refused his application under Section 205, Cr.PC but only insisting the petitioner to be present before the Court prior to consideration of the aforesaid application due to seriousness of the offence but the petitioner is not complying such order is violation of the order passed by the Ld. trial Court. According to his submission, the petitioner does not fall within the offence of category 'A' as per the judgment passed in **Satender Kumar Antil Vs. Central Bureau of Investigation and Anr. reported in (2022) 10 SCC 51** rather he falls in the category 'C' because the offences under the Scheduled Castes and Scheduled Tribes Act is a serious in nature and against the society. In those cases, even legislature did not allow the accused to pray for anticipatory bail. There is specific bar for applying anticipatory bail and requires his presence before the Ld. Trial Court for his regular bail. In view of judgment referred by the petitioner i.e. Satender Kumar Antil (Supra), this case can be treated like category C i.e. the offence pending special Acts containing stringent punishment of provision for bail like NDPS Act (Section 37), Section 45 of the PML Act, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POCSO etc. In those cases, application for exemption of personal appearance does not apply. In support of his contention he referred the judgments as follows:

i. Sheoraj Singh Ahlawat and Others Vs. State of Uttar Pradesh and Another reported in (2013) 11 SCC 476;

ii. Ravi Bafna & Anr. Vs. State of West Bengal & Anr. reported in 2006 SCC Online Cal 384, (2006) 4 CHN 881, (2007) 1 Cal LJ 96.

iii. Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others reported in 2021 SCC Online SC 315, AIR 2021 SC 1918, (2021) 2 Crimes 107, (2021) 223 AIC 3, (2022) 2 GUJ LR 1150, 2021 CriLJ 2419. Finally, he prays for dismissal of this revisional application.

SUBMISSION ON BEHALF OF THE STATE:

15. Mr. Banerjee, Learned Advocate appearing on behalf of the State submitted that he must have to appear when notice was issued against the petitioner and take bail as similar as other accused persons, thereafter his application for exemption of personal appearance may be considered. He also raised a preliminary point that this application is not maintainable as the other two accused/petitioners have appeared before the Ld. trial Court and obtained bail and their prayer of exemption from personal appearance before the Ld. Court has been allowed by disposing the application filed under Section 205 of the CrPC. Similarly, he shall

have to appear first and take bail and thereafter question of exemption of personal appearance will arise. Accordingly, the impugned order is legal as per law as such it does not require interference by this Court.

DISCUSSIONS AND ANALYSIS BY THIS COURT:

16. Heard the rival submissions of the parties and on perusal of application and annexure thereto including the impugned order dated 05.12.2023 and subsequent orders, it appears the Learned Trial Court in all occasions insisted the petitioner for personal appearance on the dates fixed though petitioner has filed an application under Section 205 of Cr.PC on 07.10.2023 praying for exemption of his personal appearance and represented through his learned lawyer on the ground of his old age, illness and residing in Delhi, far away from the Ld. trial Court. But the Ld. trial Court has kept the application pending from the date of filing till date. It is neither rejected nor allowed the said application as yet rather given direction upon the petitioner to appear personally before the Court without any reason or grounds.

17. Only question emerges in the instant revisional application for adjudication as to whether petitioner's personal attendance can be

dispensed with even without insisting upon his personal presence in the Court.

18. It is settled law that the Ld. trial Court can exercise its discretionary power under Section 205(1) of the Cr.PC for exemption from personal appearance and represent through his learned advocate. It is further open for the Ld. trial Court to exercise its discretionary power under Section 205(2) of Cr.PC and direct the accused to be present personally on any date fixed by the Ld. trial Court, whenever necessary.

19. In the present case, the offences which were alleged and subsequently, charge sheet has been submitted are punishable below five years or with fine or both. It appears from the judgment relied by the petitioner i.e. Satender Kumar Antil (Supra), the Hon'ble Supreme Court has categorically stated and ordered to be followed to the offences which have been categorised and those guidelines are, inter alia, as follows:

“Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B and D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

Requisite Conditions

(1) Not arrested during investigation.

(2) Cooperate throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge-sheet *Siddharth v. State of U.P.*, (2022) 1 SCC 676)

Category A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf

of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

Category B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

Category C

Same as Categories B and D with the additional condition of compliance of the provisions of bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D (5) of the UAPA, POCSO, etc.”

4. Needless to say, that the Category ‘A’ deals with both police cases and complaint cases.

5. The trial courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by the learned ASG is that where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the

court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

6. We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.”

7. The suggestions of the learned ASG which we have adopted have categorised a separate set of offences as “economic offences” not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in *Sanjay Chandra v. CBI*, (2012) 1 SCC 40: (2012) 1 SCC (Cri) 26: (2012) 2 SCC (L & S) 397 has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

(a) seriousness of the charge, and

(b) severity of punishment.

Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account

but simultaneously, the severity of the punishment imposed by the statute would also be a factor”.

20. It is true that there is no provision for anticipatory bail when the allegation is made under the Scheduled Castes and Scheduled Tribes (POA) Act, 1989 but such offence does not fall within the category ‘C’ as submitted by the Ld. Council appearing on behalf of the Opposite party no. 2. The Category ‘C’ is totally different from the instant case. In those cases, there is a certain restriction in allowing bail application due to grave and serious offence. In the instant case, this Court granted interim order in favour of the petitioner, who was Vice-Chancellor of Visva Bharati University on the date of alleged offence i.e. not to take coercive action against the present petitioner and the said order was challenged before the Hon’ble Supreme Court by filing Special Leave to Appeal (Crl.) No.(s) 9352 of 2023 and the said interim order was affirmed by the Hon’ble Supreme Court vide order dated 11.08.2023 and dismissed the aforesaid Special leave to appeal. The interim order is still in existence.

21. Under the above circumstances as well as the grounds set forth by the petitioner in an application filed under Section 205 CrPC, this Court does not find any reason why the Ld. trial Court is insisting the petitioner/accused to be present personally on the date fixed.

22. Upon perusal of grounds set forth in the application filed under Section 205 of the CRPC, it seems it is difficult on his part to appear before the Ld. Court. It is well settled that the power under Section 205 of the Criminal Procedure Code has to be exercised even absence of the petitioner/accused on first instant, in regards to the circumstances of the case, condition of the accused and the necessity for his personal attendance etc. Discretion vested in the Ld. Court. It should be exercised according to rules of reasons and justice and not in any arbitrary manner. Court should require to consider the case, where inconvenience likely to be caused to accused due to sufficient reasons or cause.

23. The Ld. Court can exempt the accused from personal appearance even at the stage of his examination under Section 313 of the Criminal Procedure Code, 1973 if situation arise but subject to discretionary power of the Ld. Court. Counsel can represent the accused and answer questions on his behalf. In this regards, accused must have to file an affidavit narrating the facts, to satisfy the Court, of his real difficulties to be personally present in Court. He shall assure that no prejudice caused to him in any manner, by dispensing with his personal presence during such questioning and further undertake that he would not raise any grievances on that score at

any stage of the case. The real purpose is to proceed with the trial smoothly and without prejudice to the parties.

24. The petitioner herein has filed an application under Section 205 of the Code of Criminal Procedure on 07.10.2023 praying for exemption of personal appearance and represented through his learned advocate with undertaking that petitioner will not dispute his identity and his Council will represent him would appear before the Ld. Court on the date fixed and further given undertaking that he shall not object the recording of the evidences in absence of the Petitioner.

25. In the light of the above discussions, this Court does not have any other option but to set aside the impugned order dated 05.12.2023 and subsequent orders passed by the Learned Special Court, 1st Court, Suri only with regards to direction upon the petitioner to remain personally present on the date fixed before the Ld. Court below in connection with Special (A) 8 of 2023 arising out of Shantiniketan Police Station Case No. 89/2023 dated 05.07.2023 under Sections 500/120B/34 of the Indian Penal Code read with Sections 3(1)(r)(p)(s) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

26. The learned Trial Court is directed to hear the parties and dispose of the application under Section 205 of the CrPC in accordance with law without insisting upon physical appearance of the petitioner before the Ld. Trial Court without granting unnecessary adjournment to the parties preferably within a month from the next date fixed for hearing.

I make it clear that I have not gone into the merits of the application filed under Section 205 of the CrPC as such the same is to be decided by the Ld. Court below independently without being influenced by the observations, whatsoever, made herein above and in accordance with law. Other judgments referred by the parties have not been considered or analysis by this Court as the application filed under section 205 of the Cr.PC is still pending before the Ld. Court below for its disposal.

27. Under the above facts and circumstances, the instant revisional application being **C.R.R. 5023 of 2023** is, thus, disposed of with above observations.

28. Let a copy of this judgment and order be sent to the learned Court below for information and taking necessary action.

29. Parties shall act on the server copies of this order uploaded on the website of this Court.

30. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)