

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 4 OF 2024**

Subhashkumar Vijayakumar Allena ...Applicant

Versus

The State Of Maharashtra ...Respondent

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Mr. Raja Thakare, Senior Advocate a/w Mr. Siddharth Jagushte, Ms. Drushti Gala i/by Mr. Tusshar Nirbhavane, Advocate for the Applicant.

Mr. Y. Y. Dabake, APP for the Respondent – State.

**CORAM : PRAKASH D. NAIK, J.**

**DATE : 29<sup>th</sup> JANUARY, 2024.**

**P.C.:**

1. The Applicant is facing the prosecution for offence under Section 489-B of Indian Penal Code (for short 'IPC') vide Sessions Case No.824 of 2013 pending in the Court of Sessions for Greater Bombay. The charge has been framed on 17<sup>th</sup> September, 2021. The examination-in-chief of PW-1 was recorded on 7<sup>th</sup> November, 2022. The cross-examination was concluded on 8<sup>th</sup> December, 2022.

2. The Applicant preferred an Application for permanent exemption before the trial Court. It was rejected vide Order dated 1<sup>st</sup> December, 2023.

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3. Learned Senior Advocate Mr. Thakare submitted that the Applicant is permanent resident of Hyderabad. The case is pending since last ten years. The prosecution as so far examined two witnesses. The Applicant is not disputing his identity. The Applicant was exempted from appearing before the trial Court on several occasions. However, the Application for permanent exemption was rejected by the Court on the ground that presence of the Applicant is necessary. It is submitted that the Applicant is qualified professional. It is difficult for him to attend the proceedings from Hyderabad. He is employed at Hyderabad. The Applicant has never delayed the proceedings. Advocate representing the Applicant would proceed with the trial. The Applicant would not raise objection on the issue of his identity if the trial proceeds in his absence. No adjournment would be sought on the ground that the Applicant is absent. As and when presence of the Applicant is necessary and if so directed by the trial Court the Applicant would attend the proceedings.

4. Learned APP submitted that the trial Court while rejecting the Application has observed that the presence of the Applicant is necessary. The Applicant was absent on several occasions. The trial has commenced.

5. From the Order dated 1<sup>st</sup> December, 2023, it is apparent that the trial is pending since last ten years. The prosecution as so far examined two witnesses. The Applicant is resident of Hyderabad. The Applicant is represented by the Advocate, the Applicant was exempted by the trial Court for the day on some occasions. It does not appear that the presence of the Applicant is necessary on every date of hearing. Since, the Applicant would not raise any issue with regards to his identity and since the Advocate representing him would proceed with the trial, there is no impediment in exempting him from appearing before the Court regularly. For the purpose of recording statement under Section 313 of Cr.P.C. or in any other any emergent situation if the presence of Applicant is required and if so directed by the Court the Applicant should remain present before trial Court.

**ORDER**

- i. Criminal Application No.4 of 2024 is allowed;
- ii. Order dated 1<sup>st</sup> December, 2023 is set aside.
- iii. The Applicant is exempted from appearing before the trial Court till further orders.
- iv. The Applicant shall remain present before the Court as an when directed by the trial Court.

- v. Application stands disposed off.

**(PRAKASH D. NAIK, J.)**