

126+224 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-64176-2023 (O&M)  
DECIDED ON: 06.09.2024

DILJIT KAUR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Harsh Chopra, Advocate  
for the petitioner.

Mr. Sukhsandesh Singh Chahal, AAG, Punjab.

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SANDEEP MOUDGIL, J

CRM-36057-2024

Prayer in this application is for placing on record photocopies of FIR No. 59, dated 09.03.2019 and order dated 13.06.2024 as Annexures P-10 and P-11 respectively.

In view of averments made in the present application, the same is allowed. Annexures P-10 and P-11 are taken on record subject to all just exceptions.

CRM-M-64176-2023

1. The jurisdiction of this Court has been invoked under Section 482 Cr.P.C. seeking quashing of the impugned order dated 30.10.2023 (Annexure P-1) passed by Additional Sessions Judge, Ludhiana vide which the revision petition filed by the petitioner against the order dated 13.07.2023 (Annexure P-3) passed by Judicial Magistrate Ist Class, Ludhiana has been upheld with further prayer to grant

permission to the petitioner to stay abroad during the pendency of present petition by modifying the order dated 29.07.2023 (Annexure P-8) vide which the petitioner was allowed to stay abroad upto 31.12.2023 barring the petitioner from seeking further extension to stay abroad.

2. It has been argued by learned counsel for the petitioner that the petitioner-accused has filed an application under Section 205 Cr.P.C. on the grounds that she is a British citizen with a British passport and is on regular bail. Additionally, it has been argued that the petitioner-accused is an elderly woman who needs ongoing medical monitoring due to a number of illnesses. Additionally, it has been argued that the petitioner was previously granted permission by the court to travel overseas for medical reasons from February 2022 until May 15, 2022. The aforementioned stay was extended till July 6, 2022. After that, she was once more allowed to travel overseas from August 22, 2022, until August 21, 2023, vide order dated August 18, 2022 passed by learned trial Court. The assertion is that the petitioner has never misused the concession granted by the Court and conditions imposed by the trial Court were duly complied with. According to the applicant/accused, she is currently on a waiting list, her operation has not yet been completed, and the concerned doctor has instructed her not to travel for extended periods of time. It has also been argued that, according to the letter she received from the concerned doctor, she should wait until August 22, 2023, for her turn to have surgery, and that she will need a significant amount of time to recover even after the procedure. She must remain in the UK for a lengthier amount of time in order to accomplish this.

3. Learned State counsel has contended that the petitioner is not only seeking exemption but also seeking permission to reside abroad indefinitely.

Moreover, learned Courts below have rightly dismissed the application seeking permanent exemption. However, the Court below has noted a critical deficiency in the documentation i.e. the letter lacked any signature or stamp from the issuing doctor, casting doubts on its authenticity and the veracity of the petitioner's claim. Further more, the Court observed a lack of follow-up evidence regarding the anticipated surgery, which had been the sole basis for granting the petitioner permission to travel to the UK on previous occasions i.e. from 2022. It is pertinent to note that recently on February 08, 2024, the petitioner was once again afforded permission to travel and stay abroad until June 30, 2024.

4. Heard learned counsel for the parties at length.

#### **ANALYSIS**

5. Sections 205 and 317 of the Code bestow the discretion upon the Courts to exempt an accused from personal appearance at all stages of the proceedings in the trial in appropriate cases. However, the same cannot be claimed by an accused as a matter of right; it is a matter of the discretion of the Court. Section 205 of the Code provides as under:

***"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."*

*Section 317 of the Code provides as under:*

***"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 any 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*

*interest 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 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."*

6. Both the aforementioned provisions authorise the Court to dispense with personal attendance of the accused and permit him to appear through his counsel. Further, the Court can exercise its discretion at any stage of the proceedings. The Court has the power to order the personal attendance of the accused if it becomes indispensable at a later stage.

7. It is no longer *res integra* that in cases which are not of a serious nature, the trial Court should be generous in exempting the accused from appearing in person. Reliance can be placed on the judgment rendered in "**Chintamani Das v. State of Orissa**", (2016) SCC OnLine Ori 971, which is reproduced as under:-

*"6. Law is well settled that the power under Section 205 of the Cr.P.C. has to be exercised in regard to the circumstances of the case, condition of the accused and the necessity for his personal attendance etc. The discretion vested in the Magistrate should be exercised according to rules of reasons and justice and not in an arbitrary manner. In the criminal cases which are not of serious in nature, the Magistrate should be generous in exempting the accused from personal attendance. The Court is required to consider in such cases the inconvenience likely to be caused to the accused if he is required to remain absent from his profession, occupation and trade. If no useful purpose would be served in insisting upon the personal appearance and the progress of the trial would not be hampered in any manner due to such absence, the personal appearance of the accused shall not be insisted upon."*

8. A two Judge Bench of the Hon'ble Supreme Court in "**S.V. Muzumdar v. Gujarat State Fertilizer Co. Ltd.**", 2005(2) RCR (Criminal) 860, speaking through Justice Arijit Pasayat, has laid down the law that while deciding on the issue of exemption, the Court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence.

9. The Apex Court in the case of "**M/s. Bhaskar Ind. Ltd. v. M/s. Bhiwani Denim & Apparels Ltd.**", 2001(4) RCR (Criminal) 137, has held that the accused need not appear before the Magistrate and that the Magistrate can allow the accused to make even the first appearance through his counsel. Relevant extract of the judgment reads thus:-

*"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 seeking 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 within in order to make himself present in the Court in that particular case.....*

*"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 as 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."*

10. This Court in the case of "**K.K. Vij v. Gautam Goel**", 2005(2) RCR (Criminal) 455, has enumerated the parameters for grant of exemption, which are reproduced as under:-

*"6. It, thus, emerges out that the power under Section 317 Criminal Procedure Code to grant exemption to an accused from personal appearance can be exercised by the Court for the reasons like:-*

*(a) if the evidence can be taken in the absence of the accused but in the presence of his counsel;*

*(b) there is no obstruction caused to the primary concern of the Court in relation to the administration of criminal justice;*

*(c) the Court would keep in view that the presence of the accused is not required merely to mark his presence but to expedite the trial;*

*(d) the magnitude of the sufferings which the accused may have to bear in order to make himself present in the Court, cannot be altogether overlooked;*

*(e) the accused is willing to give an undertaking that he would not dispute his identity and he will have no objection in taking evidence in his absence and in the presence of his counsel etc."*

11. Further more, even the examination of the accused under section 313 of the Code can be done through counsel and similarly, the defence counsel can represent the accused in other effective hearings. While setting aside the order of the trial Court and the High Court directing the accused to appear before the trial Court for making his statement under Section 313 of the Code, a Division Bench of the Apex Court in "**Chandu Lal Chandrakerv. Puran Mal**" 1988 SCC(Cri) 907, held that even the statement of the accused under Section 313, in appropriate cases, could be dispensed with if he furnishes an undertaking that he would not raise any objection of prejudice caused to him due to non-examination under Section 313 at

any subsequent stage of trial, appeal, or revision. In such a situation, after recording the statement of the counsel on behalf of the accused that he shall not raise any question of prejudice, it would not be necessary for the accused to appear before the trial court.

12. The Division Bench of the Hon'ble Supreme Court in **"Puneet Dalmia Vs. Central Bureau of Investigation, Hyderabad"** 2020(12) SCC 695, has held 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."*

13. The Madras High Court in the case of **"Dr. Zubaida Begum Vs. State"** 2016(2) MLJ (Criminal) 490 has observed the following:-

*"14. The Court cannot use its discretion under Section 205(2) Cr.P.C. just to see the face of the accused or just gather crowd in the Court. In fact, too much gathering in the Criminal Court is a nuisance to the Court, lawyers and prosecution and court staff. It will distract the court from its concentration. Therefore, liberal usage of the power under Section 205(1) Cr.P.C. has been advocated.*

*15. When time is so important for the Court, it is also so important to the accused. He has to eke out his livelihood. Attend to his work, without wasting his time from morning to evening in the Court when the case is posted for not making effective progress, such as plea of the accused is to be recorded, where identification of the accused is involved, where his examination under Section 313 Cr.P.C. is to be done, where he has to be questioned on the proposed sentence. But even then when the case is very simple in nature, his counsel himself could*

*answer the questions under Section 313 Cr.P.C. and the presence of the accused need not be insisted upon. The defence counsel can always receive copies under Section 207 Cr.P.C. and give acknowledgement.”*

14. The learned trial Court should exercise the powers conferred on it under Sections 205 and 317 generously and liberally and grant exemption from personal appearance, except in a case where the presence of the accused is imperative, especially when demanding personal appearance would cause serious strain and inconvenience. The idea behind taking a liberal approach towards granting exemption from personal appearance is to allow the case to be tried expeditiously.

15. The trial Court, while dealing with a prayer for exemption from personal appearance must examine if there is a reason for rejecting such prayer and the same must be recorded. However, it is pertinent that the Court ensures that on being granted such relief, the accused gives an undertaking to satisfy the Court that he would not dispute his identity as an accused in the concerned case, that his counsel would be present in the Court on his behalf, that he has no objection to a plea being recorded on behalf of a counsel and that he has no objection to recording of evidence in his absence. This undertaking would ensure the future proceedings carry on unhindered.

### **CONCLUSION**

16. It is a settled law that every accused is presumed to be innocent until proven guilty. The presumption of innocence is a facet of Article 21 of Constitution of India.

17. Keeping in view the principles enunciated in the aforementioned decisions, this Court is of the considered opinion that the following parameters can be applied for grant of exemption from personal appearance by the Courts while

exercising power under Sections 205 and 317 of the Code. The personal appearance of the accused should be dispensed with when the accused is:-

- i) a woman;*
- ii) an elderly person;*
- iii) a person with disability;*
- iv) when accused is facing inconvenience and unjustified ordeal on account of delay in trial attributable to the prosecution;*
- v) facing extreme hardship i.e. economic and physical;*
- vi) required to travel a long distance to attend the trial.*

These instances are not exhaustive but only illustrative.

18. When the presence of an accused becomes indispensable at any subsequent stage of an inquiry or trial, the Court has ample powers to secure his presence in such eventuality. It must be noted that a one size fits all approach cannot be taken while exercising the powers under Section 205 and 317 as each case is required to be assessed on its own facts and circumstances.

19. *The Hon'ble Supreme Court in **Bhaskar Industries (supra)** had held that it is well within the power of the Magistrate to dispense with the personal appearance of the accused either throughout or at any stage of the proceedings in a summons case if they are of the view that the accused would face unjustified suffering or trouble and the advantage being derived out of their presence is nominal. Same principles were extended to warrants case by the decision in **Puneet Dalmia (supra)**.*

20. The Courts are empowered to impose any other condition which they may deem fit and proper in the facts and circumstances of the case in the interest of justice. For example, if the trial is being delayed on account of the absence of the accused when the witnesses are required to identify him, the accused can be directed to be present for this purpose. If the Courts become liberal in granting

exemption from personal appearance, it would reduce the avoidable footfall in the Courts and would facilitate the effective dispose of the trial. The Courts should only order appearance of the accused when it becomes indispensable.

21. In the light of the above discussion and judicial pronouncements, the present petition is allowed and the order dated 30.10.2023 (Annexure P-1) passed by Additional Sessions Judge, Ludhiana vide which the revision petition filed against the order dated 13.07.2023 (Annexure P-3) declining the application under Section 205 Cr.P.C. filed by the petitioner is set aside. It is ordered that the personal appearance of the petitioner before the trial Court is exempted, subject to the following conditions:

- i) Petitioner shall be represented through her counsel;*
- ii) shall not delay/stall the trial proceedings;*
- iii) shall not dispute her identity as accused;*
- iv) shall have no objection if the prosecution evidence is recorded in her absence but in the presence of her counsel;*
- v) shall appear before the trial Court as and when required; and*
- vi) any other condition which the trial Court may impose.*
- vi) in case of any default made by the petitioner, the concession granted shall automatically deemed to have been withdrawn.*

22. As far as the prayer with regard to the stay of the petitioner in abroad is concerned during the pendency of the trial, considering the age and medical condition of the petitioner, she is allowed to stay there during the pendency of the trial subject to the afore-said conditions, as imposed by this Court or by the trial Court

23. With the aforesaid observations, the present petition is disposed of.

06.09.2024  
Sham

(SANDEEP MOUDGIL)  
JUDGE

Whether speaking/reasoned      Yes/No  
Whether reportable                Yes/No