

CRM-M-5454 of 2025

2025:PHHC:014375



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-5454 of 2025

Date of decision: 30.01.2025

Gagandeep Kaur

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Rahul Aggarwal, Advocate,
for the petitioner.

Mr. Yuvraj Singh Tiwana, AAG, Punjab.

NAMIT KUMAR, J.

1. Instant petition has been filed by the petitioner under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing of the order dated 18.12.2024 (Annexure P-5), passed by learned Judicial Magistrate 1st Class, Jalandhar, in CHI-493-2024 titled “State v. Varinder Singh and others”, whereby application filed by accused-respondent No.2 under Section 228 of the Bharatiya Nagarik Suraksha Sanhita, 2023, has been partly allowed and his personal appearance has been exempted during trial.

2. Brief facts of the case are that petitioner got married to respondent No.2 on 04.03.2017 at Jalandhar. However, the marriage could not run successfully and petitioner got lodged FIR No.0101 dated 12.10.2023 under Sections 406 and 498-A IPC at Police Station Police Commissionerate, District Jalandhar. In the said case investigation is complete, challan has been presented before the trial Court on 28.03.2024 and the trial Court has framed charges under Sections 406



and 498-A IPC on 19.09.2024. On 18.07.2024, respondent No.2-accused filed an application under Section 228 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking exemption from personal appearance before the trial Court, which has been partly allowed by the trial Court vide impugned order dated 18.12.2024 (Annexure P-2). Hence, the present petition.

3. Learned counsel for the petitioner contended that the trial Court has wrongly granted exemption from personal appearance to respondent No.2 despite the objection raised by the petitioner. He further contended that the impugned order passed by the trial Court is in contradiction to the procedure established under the law. He further contended that under the garb of the said order, there is every apprehension that he may abscond as he would flee the country and would not appear during trial. He further contended that for identification during trial, presence of respondent No.2 is very much necessary. He further contended that grant of permanent exemption to respondent No.2 during trial would cause prejudice to the petitioner, therefore, the impugned order is liable to be set aside.

4. I have heard learned counsel for the petitioner and perused the record.

5. Operative part of impugned order dated 18.12.2024 reads as under: -

“5. Heard. File perused. Perusal of file shows that the applicant/accused has moved present application for permanent exemption supported with duly sworn affidavit restating the averments of application. Further, his

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counsel also gave an undertaking to the effect that he shall appear on behalf of accused in his absence and shall inform him about the date of hearing and also as and when his appearance is required during the hearing. It is required to be mentioned here that the applicant/accused has attached a copy of e-mail received from the Great Indian Shipping Company Ltd. stating that in event of a break in service of more than 24 months from last sign of, the company would treat him as a new recruit and he will be required to go through the recruitment process again. It is further mentioned that he has already not reported for around 21 months and if he will not report in three months, he will fall foul of the break in a service rule. It means that accused has to report back within three months from 08.11.2024 as the e-mail is dated 08.11.2024. It is important to mention here that accused is seeking exemption from this Court that he can be given permission to move in India for the purpose of job as well as abroad on ship. Accused has placed on record the e-mail from GE Shipping Company which is a Great Eastern Shipping Company Limited which operates in India and its headquarters are at Mumbai. No doubt accused requires to work for meeting his expenditure. The defence counsel has argued that he has to pay maintenance charges to complainant as well. So, he has to meet financial need of complainant as well.

The law with regard to the permanent exemption from personal appearance is well settled to the effect that where a Court is satisfied that in interest of justice, the personal attendance of accused need not be insisted upon, the Court has the power to dispense with the personal attendance of accused. It is further well settled, that in case a Court feels that insisting upon personal attendance of accused in a peculiar case would inflict enormous

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sufferings and comparative advantage would be less, the court can grant relief to such an accused. Reliance in this regard is placed upon Bhaskar Industries Ltd. V. Bhiwani Denim & Apparels Ltd. (2001) 7 SCC 401. Further Hon'ble Apex Court in citation titled as "Rajesh Sharma VS State of UP & Anr." has observed that "Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial".

6. *In the present case, the accused has stated through a duly sworn affidavit that he has not been able to get into contract with the company since January 2023 due to registration of this case and the said job is his only source of income. Further the assertion of complainant/respondent regarding agricultural income of accused is not supported by any document. Thus, in the present case, insisting upon the personal attendance of accused would adversely affect the source of his livelihood. Also, the assertion of complainant/respondent that presence of accused is required for the purpose of his identification by complainant is not tenable as accused is the husband of complainant and there is no denial of relationship by accused. It is important to mention here that the accused cannot be refused permission for permanent exemption only on ground of identification as accused would tender affidavit in the Court to the effect that he will not dispute his identity, in case he is granted permanent exemption from this Court.*

7. *The ld. Counsel for the complainant argued that as per reply filed in application under Section 125 Cr.P.C. accused is pleading that he has no income source at present. But in present application, he is alleging about*

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job. Careful perusal of both the application shows that accused has mentioned the fact that he is not getting any salary due to pendency of present case due to non-joining of service. So, it is clear that there is no contradiction in pleadings of accused which can be made a ground to dismiss his application.

8. *Further, accused is seeking permission to go abroad as well on ship. To my mind, accused does not require any such permission as the ship belonging to Indian Company would be treated within the jurisdiction of India only. It seems that accused is trying to take permission to go abroad alongwith this application in ambiguous terms which is not permissible as it would be difficult to ensure presence of accused whenever required in the Court. So, keeping in view the financial hardship faced by accused and the fact that he has to pay maintenance to the complainant, the present application stands partly allowed and disposed of, subject to the following conditions mentioned hereunder:-*

(i) Personal appearance of applicant is hereby exempted during entire trial of this case subject to condition that he shall put his appearance in the Court in person as and when required by the Court.

(ii) The applicant has no objection if the evidence is recorded in his absence and in the presence of his counsel and he would not raise any objection to the recording of evidence in his absence.

(iii) That applicant will not dispute his identity.”

6. Perusal of the record shows that respondent is a marine engineer working on contract basis with GE Shipping Company, which lasts for 6-7 months and the last contract expired in January, 2023. Due to pendency of matrimonial litigation between the petitioner and the



respondent, the respondent could not enter into new contract and he is out of job since January, 2023 and has no other source of income. To meet his expenditure and to pay maintenance to the petitioner, the respondent requires to work. It is well-settled that where the Court is satisfied that in the interest of justice personal attendance of accused need not be insisted upon, the Court has power to dispense with the personal attendance of the accused. In the present case, keeping in view the peculiar circumstances of the respondent, his personal appearance has been exempted subject to the condition that he shall put in appearance in Court as and when required by the Court; he would have no objection if the evidence is recorded in his absence and in the presence of his counsel and he would not raise any objection to the recording of evidence in his absence and the respondent will not dispute his identity. So far as contention of the learned counsel for the petitioner that presence of the respondent is required for identification purpose is concerned, there is no denial on the part of the respondent with regard to relationship of husband and wife between the respondent and the petitioner.

The prayer of respondent No.2 seeking permission to go abroad has been considered and declined by the trial Court by recording a finding that in that eventuality, it would be difficult to ensure his presence whenever required by the Court whereas he has been permitted to go on ship by observing that respondent-accused does not require any such permission as the ship belonging to Indian Company would be treated within the jurisdiction of India only, meaning thereby



that he can board the ship for performing his duty to earn his livelihood. Therefore, presence of respondent No.2 has been exempted during trial subject to stipulated conditions that he shall have to appear before the Court as and when called.

7. In view of the above, there is no illegality or perversity in the impugned order, which may warrant any interference by this Court.

8. Dismissed *in limine*.

30.01.2025
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No