



**IN THE COURT OF XIV ADDITIONAL SPECIAL JUDGE FOR CBI CASES,
CHENNAI – 104.**

Present: Thiru. J. Omprakash, L.L.M., P.G.D.H.R.M.,

XIV Additional Special Judge for CBI Cases,

XIV Additional Special Court for CBI Cases, Chennai.

Saturday, the 4th day of January 2025

Crl. M.P. No.66/2025

in

Spl. C.C. No.12/2024

1. Shri. J. Hariharan

...Petitioner/Accused - 1

-V/s.-

The Assistant Director,
Directorate of Enforcement,
Govt of India,
Chennai – 6.

...Respondent/Complainant

This petition coming on this day before me for final hearing in the presence of M/s.T.S.Kanmani and Mr.S.M.Mandhie Devhan Counsel for petitioner / Accused – 1 and Mr. N. Ramesh, Special Public Prosecutor for respondent, upon hearing their arguments, upon perusing the petition, counter and other connected material papers thereto, this court delivered the following:

ORDER

- 1) This petition has been filed by the petitioner / Accused – 1, u/s. 91 of BNSS, 2023, praying this court to direct the petitioner to execute the bond for his appearance before this court.
- 2) Records perused. On perusal of records it seems set the director of enforcement as filed a case against the petitioner/accused-1 to for the alleged offence committed



u/s.3 of PMLA Act 2022 its punishable u/s 4 of the PMLA Act 2022. The case was taken cognizance by the court. The accused have appeared before this court. From the records in seems that the accused neither arrested by the investigation officer nor the accused have obtain anticipatory bail. In that situation the petitioner/accused-1 has filed this application u/s.91 of BNSS by permitting him the execute the bond with or without surety. As the petitioner has file this application u/s 91 of BNSS it is imperative on the part of this court to extract the set section. For easy reference the said section is extracted below:

When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond or bail bond for his appearance in such Court, or any other Court to which the case may be transferred for trial.

Further more our Hon'ble High Court in *Crl.M.P.No.971 of 2024 in Crl.A.No.98 of 2024 Shri .R. Sekar & another Vs. State rep. By :- The Deputy Director, Directorate of Enforcement, Respondent. As held as follows:*

In order to avoid any infraction of the right of the accused to seek suspension of sentence, we deem it appropriate to crystalise the directions issued by this Court and by the Hon'ble Apex Court in the following manner"

(a) When an accused appears before the court on summons for a trial and has neither obtained anticipatory bail nor been arrested and



released on bail, the Magistrate shall obtain bond under section 88 of the Cr.PC., to ensure his appearance and participation in the trial.

(b) The trial Court, during the course of the trial, after hearing the arguments of the parties may also obtain bail bonds in terms of the note appended to Rule 24 of the Criminal Rules of Practice, which shall be valid for six months.

(c) The trial court shall not deny the prayer of suspension of sentence on the date of the judgment, merely on the ground that accused, who is at but would be well within its powers to obtain the bail bond on the date of the judgment and may suspend the sentence, provided the other conditions in section 389(3) of the Cr.P.C., are satisfied.

Section 88 of the Cr.PC., empowers the Court to direct a person to whom, the court is empowered to issue a summons or warrant, and is present in court to execute a bond with or without sureties. Section 88 of the Cr.PC. Reads as follows:

“88. Power to take bond for appearance: when any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial.”

The above provision is to ensure that the person who has not already



executed the bail bond during the investigations can be asked to execute the bond to ensure his appearance before the court and section 89 of the Cr.P.C., provides that the Court may direct the arrest of the persons who violates the bond and does not appear before the Court. Therefore, these provisions are to ensure only the appearance before the Court Under section 89 of the Cr.P.C., does not speak about execution of bonds and in the said provision the expressions, 'being on bail' or 'is on bail' is found.

The Hon'ble Supreme court in *Satender Kumar Antil Vs. Central Bureau of Investigation and Another*, held that the Courts need not insist on a bail application while considering the application Under section 88 of the Cr.P.C. The relevant portion reads as follows:

“73(e). There need not be any insistence of a bail application while considering the application Under sections 88 of the Cr.P.C., 170, 2014 and 209 of the Code.”

The reading of Under section 88 of the Cr.P.C., would make it clear that discretion is vested with the Court to requires a person to execute a bond for his appearance. This Court in *Kumar Vs State of Tamil Nadu*, reported in 2014(2) LW (Crl) 789, held that even in private complaints, such as prosecution Under section 138 of the Cr.P.C., of the Negotiable Instruments Act, the Court should take a bond from the accused Under section 88 of the Cr.P.C. the Court also referred to the



judgment of the Hon'ble Supreme Court in Indian bank Association and others Vs. Union of India, reported in 2014(2) LW 400. the relevant portion reads as follows.

In the private complaint cases like prosecution Under section 138 of the Negotiable Instruments Act, the accused will appear on summons and the Court should take a bond form him Under section 88 of the Cr.P.C., Hon'ble Supreme Court in Indian bank Association and others Vs. Union of India, reported in 2014(5) SCC 590, (A copy of the order has been circulated to all the Judicial Officers on the orders of the Apex Court) has directed the Magistrate to obtain a bond from the accused when he appears. Hereafter, all the Magistrate in the State are required to strictly follow the said direction issued by the Supreme Court. If on the first hearing, if the accused comes unprepared to furnish sureties for the bond, a reasonable time can be given to him to bring the sureties and execute the bond. We further direct that a bond Under section 88 of the Cr.P.C., should be taken in all cases, both summons and warrant cases, where an accused who has not been arrested and released on bail, appears before the court on summons. The includes even cases under the Prevention of Corruption Act. If the accused absconds during Trial, he can be arrested in execution of non-bailable warrant and remanded to judicial custody and later released on bail. In such cases also he will



be entitled to set off Under section 428 of the Cr.P.C. Therefore, it is necessary for the trial Court Presiding Officers to mention about all these aspects clearly in the judgment itself.”

(i) Rule 24 of the Criminal Rules of Practice, 2019 issued by this Court reads as follows:

Person accused of a non-bailable offence not been released on bail or anticipatory bail.? On the appearance, on summons, of a person accused of a non-bailable offence, who has not been released on bail or anticipatory bail, the Court may obtain a bond in Judicial Form No.74, with or without sureties, in the event of not remanding the accused into custody.

Again the Note to Rule 24 of the Criminal Rule of Practice, 2019 the Criminal Rules of Practice, 2019 specifically provides that it is for the Court to require the accused to obtain bail bonds.

The Hon’ble High Court in the above said judgment as categorically held that if the accused to neither obtain anticipatory bail are arrested and leased on bail the court shall obtain bond u/s.88 of Cr.PC (Now Sec.91 of BNSS) to ensure the appearance of accused and participation and trial. By applying the said principle in the given case , this court inclines to obtain bond required under rule 24 of Criminal rules of Practice 2019 in form 74, to ensure the accused appearance before this court for future hearings, on condition that the accused shall execute a



bond U/s. 24 of criminal rules of practice 2019 under form 74, for Rs.10,000/- and two such sureties, each for the like sum, and also required to appear before this court on every future hearings and to extend his fullest co-operation for the progress and early disposal of this case without fail and this petition is allowed in the interest of justice.

In the result, this petition is allowed as follows they are

- 1) The petitioner shall furnish two sureties to the like sum of Rs.10,000/- each to the satisfaction of this court.
- 2) The petitioner shall also execute a bond for Rs.10,000/- U/s. 24 of criminal rules of practice 2019 under form 74.
- 3) The petitioner shall co-operate for the disposal of this case.
- 4) If the petitioner fails co-operate for the disposal of the case the bail bond cancel as per sec. 92 of the BNSS.
- 5) If the petitioner takes Fixed deposit for the surety amount the same shall be taken in the name of the court with automatic renewal.

Directly dictated to the steno-typist, computerized by her, corrected by me and pronounced by me in the open court this the 4th day of January, 2025.

**XIV Additional Special Judge for CBI Cases,
XIV Additional Special Court for CBI Cases,
Chennai – 104.**