

RCC No.300243/2008
State / Dhiraj and others

Order passed below Exh.209
(Passed on 21.08.2024)

Applicant / Accused No.12 **Anil Gangaram Somkuwar** has filed application for permanent exemption u/s 317 of Cr.P.C.

2. It is averred in the application that accused No.12 is suffering from Kidney disease. He is now under dialysis since 6 years. He cannot stand properly. Therefore, it is unable to present before the Court on each and every date. Hence, prayed for permanent exemption to appear before the Court. He has filed certificate issued by Lata Mangeshkar Multispeciality Hospital in support of his application.

3. Learned APP has filed say and taken strong objection. According to APP, if application is allowed accused may be absconded and trial may be hamper. Hence, prayed that application be rejected.

4. Heard learned advocate for accused. As per section 317 of Cr.P.C., trial can be held in absence of accused, for the reason which is satisfied to the court. The accused has specifically stated in his application that he is under dialysis since 6 years due to Kidney fail. Certificate issued by Lata Mangeshkar Multispeciality Hospital shows that accused is undergoing regular Hemodialysis. Apparently he cannot stand and walk properly.

5. Record shows that charge has been framed against accused No.12 at Exh.195 on 20.10.2023. matter is pending since 2008. however,

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yet charge is not framed against all accused. It shows that more time will require to frame charge against all the accused and to conclude the trial. Considering age and illness of accused his presence can be exempted till recording of statement u/sec. 313 of Cr.P.C.

6. Learned Advocate for accused has given assurance that trial will not be delayed due to his absence and he has no objection to record evidence in absence of accused No.12. Further, he undertakes that he will not dispute identify of accused during the trial. Considering undertaking given by the accused and reason mentioned in the application and stage of the matter i.e. for framing of charge, exemption can be granted to the accused till recording of statement u/sec. 313 of Cr.P.C. Hence, I passed the following order :-

ORDER

- 1) Application (Exh.209) is partly allowed.
- 2) Accused No.12 Amit Gangaram Somkuwar is exempted from personal appearance till recording of statement u/sec. 313 of Cr.P.C. Further, he is directed to remain present before the Court, as and when required or as per directions of the Court.

Dtd. 21.08.2024

(Smt.S.T.Dande)
Chief Judicial Magistrate,
Nagpur.