



MHRG160001582022

ORDER BELOW EX.11 IN SUM CRI. CASE No. 71/2022

Present application has been filed by the accused and requested for permanent exemption from personal appearance under section 205 read with 317 of Criminal Procedure Code.

02. It is submitted that, accused is uneducated house wife and residing at Goregaon (w), Mumbai. Accused has no contractual relations with complainant. She requested to remain present through her counsel. She will remain present as and when court directs for her personal presence. She is facing financial difficulties. She is ready to answer all questions u/s. 313(1)(b) of Cr.P.C. if the said questions are supplied to him through his advocate. Thus, she requested for exemption from personal appearance and also requested for permission to answer question u/s. 313(1)(b) of Cr.P.C.

03. Ld. Advocate for the complainant filed his say at ex.13 and submitted accused himself signed and handed over alleged cheque. He submitted, reasons for application are baseless and false. She has filed present application with an intention to just avoid and prolong trial of present case. Due to absence of accused complainant is suffering from injustice. Accused is healthy. No sufficient reason in the application. Hence, requested to reject present application.

04. Heard arguments of both ld.Advocates. Heard ld. Advocate for the complainant and advocate for the accused. Ld.

Advocate for the accused argued no contractual relationship between accused and the complainant. She has not given alleged cheque to the accused. She is residing at Goregaon (w), Mumbai. Due financial adversities unable to remain present each and fix date in the court. He draw attention towards affidavit supported with present application and submitted. She will participate in trial through her advocate. If questions under section 313(1)(b) provided she will answer those questions. Hence, requested for permanent exemption. Ld.Advocate for the accused relied on decision of Hon'ble High Court *Criminal Writ Petition No. 6145/2019 M/s. Solutions Advertising Pvt. Ltd. And another Vs. The State of Maharashtra and others* decided on 22/01/2020.

05. It appears, being a summons case it was directed to accused to remain present by serving summons to accused. Despite of service of summons accused remained absent hence bailable warrant was issued against accused. Bailable warrant returned unserved. However, accused appears through her advocate and filed present application for cancellation of bailable warrant and also filed present application. It appears, accused failed to file an application for furnishing bail bonds till today.

06. Close perusal of affidavit filed on record regarding Sec.313(1)(b) of Cr.P.C. accused requested to answer those questions through her advocate. However, being a summons case it is necessary to inform particulars of offences to the accused if she remain present before court under section 251 of Code of Criminal Procedure. However, Ld. Advocate for the accused submitted plea can be recorded through advocate in absence of accused. The position is clear and settled regarding that. However, in summons

case in absence of accused particulars of accused can be allowed to record if accused gave such affidavit and undertaking relying upon her advocate. However, in the present case it appears she has filed affidavit in respect of recording of answers of statement under section 313(1)(b) of Cr.P.C. However, it appears despite of service of summons accused absent. Thereafter, accused appeared through her advocate. Present application has been pending since 22.08.2023 and till today she failed to appear and failed to apply for bail. It is the argument of the ld. Advocate for the complainant due to absence of accused complainant is facing injustice.

07. In the case of *Bhaskar Sen Vs. State of Maharashtra reported in 2004(2) Bom.C.R.(Cri) 674* Hon'ble high Court issued guidelines and requisites regarding permanent exemption and trial in absence of accused. It can be observed undertaking of accused is necessary while dealing with present application. However, no such undertaking has been filed on record. Considering entire aspects, do not found reasons for present applications are just and satisfied. However, it appears presence of accused is necessary for trial. Absence of accused during trial may delay the trial. Considering these aspects proceed to pass following order.

ORDER

Application is rejected.

(Dictated and Pronounced in Open Court)

Date:-28.08.2024
Pali

(R.A.Shivratri)
Judicial Magistrate F.C.,Pali