

ORDER BELOW EXH. 235 IN SESSIONS CASE NO.44/2016
(CNR NO: MHRT040005822016)
(The State Vs. Alim Hamjamiya Sahibole & Ors.)

1. Accused No. 3 namely Amiruddin Abdul Rahman Sahibole, has preferred the present application seeking exemption from personal attendance till further orders.

2. The applicant accused no.3 submits that he has no concern with the offence in question. The case is pending since the last ten years and the trial has not progressed for reasons not attributable to him. It is contended that he has always shown readiness to proceed with the trial and has instructed his advocate to conduct the matter regularly. The applicant states that he is employed as an Electrician in Kuwait and is the sole breadwinner of his family consisting of his wife and four minor children. Due to his limited educational qualifications, he is unable to secure suitable employment in India. He further submits that he had come to India on 40 days leave to attend the court proceedings. However, the trial could not conclude and there is no likelihood of early conclusion. If he fails to rejoin his employment abroad, he would lose his job, resulting in serious financial hardship to his dependent family members. Therefore, he seeks exemption from personal appearance, undertaking that his advocate shall conduct the matter regularly and that he shall abide by all conditions imposed by the Court. The application is supported by an affidavit. The applicant and his learned advocate filed a pursis at Exhibit 241 stating that there is no dispute regarding identification during the trial.

3. Per contra, the learned APP and the learned Advocate for the informant have opposed the application at Exhibit. 239. It is contended that the accused had earlier travelled abroad without obtaining prior permission of the Court, pursuant to which a warrant of arrest and proclamation came to be issued against Accused No. 3. On account of his absence, the trial remained pending without any substantial progress. It is further submitted that the presence of the accused is necessary, particularly for the purpose of identification during trial. It is apprehended that if exemption is granted, the accused may abscond, thereby causing further delay in the proceedings. Hence, it is prayed that the application be rejected.

4. Heard learned advocates for both sides. Perused the application, reply, pursis and the record.

5. From the record, it appears that the evidence of the informant is pending since long. On 11th October 2017 the examination in chief of the informant was commenced. The accused had expressed readiness to proceed with the cross-examination through his advocate. Thus, the delay in the progress of trial cannot be attributed to the accused.

6. It is also pertinent to note that the applicant is seeking exemption solely for employment purposes. The right to livelihood and right to movement are fundamental rights guaranteed under Articles 19(1)(g) and 21 of the Constitution of India. Further, the accused enjoys the presumption of innocence till proven guilty.

Denial of exemption in the present facts would result in grave financial hardship to the accused and his dependent family members, especially when the trial is pending since long without substantial progress.

7. In the present case, the applicant has filed a pursis at Exhibit 241 expressly stating that no dispute shall be raised regarding his identity during the course of trial. Therefore, the apprehension raised by the prosecution regarding identification stands substantially mitigated. The accused having undertaken not to dispute identity.

8. The contention of the prosecution regarding previous unauthorised travel of the accused has been duly considered. If the accused had violated any provision of the Passport Act or Rules, the competent authority is at liberty to take appropriate action in accordance with law. However, the present Court is primarily concerned with ensuring the progress of the trial. In the present case, the accused has undertaken to proceed with the trial through his advocate and to comply with all directions of the Court. Hence, mere apprehension of delay is not sufficient to deny the relief sought.

9. Refusal of exemption in the present circumstances would result in disproportionate hardship to the accused, whereas granting it with safeguards would not prejudice the prosecution. Considering the prolonged pendency of the case, the conduct of the accused, the lack of progress in recording of prosecution evidence,

and the fundamental right of the accused to livelihood, this Court is of the opinion that the application deserves to be allowed with appropriate conditions.

ORDER

1. The application at Exhibit 235 is allowed.
2. Accused No. 3 namely Amiruddin Abdul Rahman Sahibole, is hereby granted exemption from personal attendance in Court till further orders, subject to his advocate conducting the matter in his absence without disputing his identity.
- 3 The accused shall remain represented by his advocate on every date of hearing during his absence.
4. The accused shall remain present before the Court as and when specifically directed, particularly when his presence is necessary for the effective conduct of the trial.
5. The accused and his advocate shall not seek unnecessary adjournments and shall co-operate for expeditious disposal of the case.

Khed.
Date-20.02.2026.

Sd/-
(V.T. Nirgude)
Additional Sessions Judge,
Khed.

S.C.No.44 of 2016, order below Exh.235

Certificate

I affirm that the contents of this pdf file order are same word as per original order.
Name of Stenographer : S. V. Mulukh, Junior Clerk

Court Name : District Judge 2 & Addl.Sessions Judge, Khed.

Date of Decision : 20.02.2026

Order Signed by P.O. on : 20.02.2026

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