

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Revision (D.B.) No. 196 of 2022

Vinod Kumar Petitioner

Versus

1.The State of Jharkhand			
2.Shambhu Nath Singh	...	...	Opposite Parties

CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
: HON'BLE MR. JUSTICE RAJESH KUMAR

For the Petitioner : Mr. Umesh Prasad Singh, Senior Advocate
For the Opposite Parties : Mrs. Priya Shrestha, Special P.P.

2/30.03.2022 I. A. No. 2371 of 2022:

Defects as pointed out by the office are ignored.

Heard learned counsel for the parties.

This interlocutory application has been preferred by the petitioner under Rule 159 of the Jharkhand High Courts Rules 2001 for granting exemption to the petitioner from surrendering pursuant to the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge IVth, Gumla in Criminal Appeal (DB) No. 103 of 2013.

It has been submitted by the learned senior counsel for the petitioner that the petitioner is a retired person who is suffering from various ailments for which reference has been made to the prescriptions brought on record through this application. Learned senior counsel submits that a contractor had filed an FIR against the petitioner and others as Gumla P. S. Case No. 100 of 2000 which ultimately led to acquittal of the petitioner vide judgment and order dated 28.06.2013 passed by the learned C.J.M., Gumla. Learned senior counsel adds that against the judgment and order of acquittal passed by the learned C.J.M., Gumla, the State had preferred an appeal being Criminal Appeal No. 103 of 2013 in which vide judgment dated 28.02.2022, the learned Additional Sessions Judge IVth, Gumla has set aside the order passed by the learned C.J.M., Gumla and has convicted the appellant for the offence committed under Section 409 I.P.C. and sentenced him to undergo rigorous imprisonment for 10 years along with a fine of Rs. two lacs. It has also

been submitted that in the order dated 28.02.2022, the learned appellate court had directed the petitioner to surrender before the trial court within a month to serve the sentences. Mr. Singh, learned senior counsel has also submitted that it was beyond the domain of the learned appellate court to have sentenced the petitioner to a period beyond which was permissible under law by the learned C.J.M. In the background facts and circumstances of the case, Mr. Singh has prayed that the petitioner be exempted to surrender and in support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in the case of *"Vivek Rai and Another Vs. High Court of Jharkhand through Registrar General and Others"* reported in (2015) 12 SCC 86.

Learned Special P. P. has opposed the prayer for exemption made by the petitioner.

On consideration of the submissions advanced by the learned counsel for the respective parties and on perusal of the order passed in the case of *"Vivek Rai and Another"* (supra), it appears that the Rule 159 does not affect the inherent power of the High Court to exempt the requirement of surrender in exceptional situations. Reference in this connection has been made to paragraph 11 of the said judgment which is quoted hereinunder:

11. *"It has not been disputed even by the learned counsel for the High Court that the Rule does not affect the inherent power of the High Court to exempt the requirement of surrender in exceptional situations. It cannot thus, be argued that prohibition against posting of a revision petition for admission applies even to a situation where on an application of the petitioner, on a case being made out, the Court, in exercise of its inherent power, considers it appropriate to grant exemption from surrender having regard to the nature and circumstances of a case. Thus, the exception as found in the corresponding Supreme Court Rules that if the Court grants exemption from surrender and directs listing of a case, the Rule cannot stand in the way of the Court's exercise of such jurisdiction, has to be assumed in the impugned Rule."*

The circumstances as denoted by the learned senior counsel for the petitioner does highlight the exceptional situations under which while exercising the inherent power of the High Court, exemption can be granted to the petitioner from surrendering. Apart from the fact that the petitioner has been convicted against an order of acquittal by the State

and has been accordingly sentenced as well as the medical condition of the appellant, we are inclined to exempt the petitioner from surrendering.

Accordingly, this application preferred by the petitioner for exemption to surrender is allowed.

I. A. No. 2371 of 2022 stands allowed and disposed of.

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Admit.

Issue notice to the opposite party no. 2.

Call for the Lower Court Records.

(Rongon Mukhopadhyay, J)

(Rajesh Kumar, J.)