



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.949 of 2026

*Manish Agarwal*

.....

*Petitioner(s)*

*Mr. Abinash Routray,  
Advocate*

*-Versus-*

*State of Odisha*

.....

*Opposite Party (s)*

*Mr. Debasish Nayak, AGA*

**CORAM:**

**DR. JUSTICE SANJEEB K PANIGRAHI**

**ORDER**

**26.03.2026**

**Order No.**

01.

1. This matter is taken up through hybrid arrangement.
2. Heard Learned Counsel for the Parties and perused the documents placed before this Court, specifically, the impugned order dated 14.10.2025 passed by the learned Additional Sessions Judge, Malkangiri in CT Case No. 85 of 2025, the order dated 22.07.2025 of the Supreme Court in SLP (Criminal) No. 7877 of 2025, and the High Court of Orissa (Video Conferencing) Rules, 2025.
3. The facts, briefly stated, are these. The petitioner stands accused of offences under Sections 306/120-B/34 of the Indian Penal Code in CT Case No. 85 of 2025 pending before the learned Additional Sessions Judge, Malkangiri. In connection with this case, the



petitioner approached the Supreme Court in SLP (Criminal) No. 7877 of 2025. By order dated 22.07.2025, the Court granted an anticipatory bail to the petitioner, subject to the condition that he "*shall remain present before the trial Court on each date of hearing.*" Since July 2025, the petitioner has complied with this condition and has appeared on every date fixed by the trial Court.

4. The petitioner presently serves as Registrar of Cooperative Societies, Odisha, stationed at Bhubaneswar. The seat of trial at Malkangiri lies approximately 650 kilometres from Bhubaneswar. The terrain and connectivity between the two places are such that each round trip consumes two to three working days. In view of this practical difficulty, and relying upon the High Court of Orissa (Video Conferencing) Rules, 2025, the petitioner moved an application before the trial Court seeking permission to appear through video conferencing. The learned trial Court, by the impugned order dated 14.10.2025, rejected the said application, holding in effect that the condition imposed by the Supreme Court required *physical* presence and could not be satisfied through virtual appearance.

5. The narrow question for consideration is whether the condition imposed by the Supreme Court that the petitioner shall remain present before the trial Court on each date of hearing requires physical presence in the courtroom, or whether appearance through



video conferencing, as permitted under the applicable Rules and statutory provisions, constitutes valid legal presence sufficient to comply with the condition.

6. Before considering what is meant by “presence,” it is necessary to first clarify what is meant by the “Court” before which the petitioner is required to remain present.

7. In common understanding, the word “court” brings to mind a physical space, a dais, a witness box, rows of benches, and court staff attending to proceedings. For a long time, a court was understood in precisely these terms, as a place where the sovereign or the sovereign’s representative administered justice. The physical setting and the institution were closely identified, and it was difficult to separate one from the other.

8. The law, however, does not equate a court with its physical setting. In the legal sense, a court is the exercise of judicial power by a duly constituted authority within its jurisdiction. It is the Judge, acting within the scope of that authority, who constitutes the court, while the building merely provides a venue. Even where proceedings are conducted outside a conventional courtroom, such as during emergencies, their judicial character and binding nature remain unaffected. The court is therefore defined by the authority of the presiding officer, not by the physical location of the courtroom.



9. This understanding has now been codified. **Rule 2(d) of the High Court of Orissa (Video Conferencing) Rules, 2025** defines “Court” to *include* a virtual court or tribunal. The use of the word “includes” is deliberate and expansive. It does not replace the physical court but enlarges the concept to embrace the virtual. When a Judge presides over proceedings through a video conferencing platform sanctioned by the Rules, he/she is no less “the Court” than when he/she sits in the courtroom. The judicial authority is the same; the jurisdiction is the same; the power to administer oaths, record evidence, and pass orders is the same. Only the medium of communication has changed.

10. The Supreme Court had occasion to consider this question, albeit in a different context, in *Swapnil Tripathi v. Supreme Court of India*<sup>1</sup>. The Court, while directing the live-streaming of proceedings, recognised that the concept of an “open court” is not confined to the physical courtroom. The principle of open justice, the Court observed, is served equally, indeed, in many ways more effectively, when proceedings are accessible through electronic means. The Court held as follows:

*“24 For lawyers and judges familiar with the cocoon of a physical court room, live-streaming would require attitudinal changes. They include the maintenance of order and sequencing of oral arguments. Judges in charge*

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<sup>1</sup> (2018) 10 SCC 639



*of their courts would have to devote attention to case management. But these demands are necessary incidents of the challenges of our time. Slow as we have been to adapt to the complexities of our age, it is nonetheless necessary for the judiciary to move apace with technology. By embracing technology, we would only promote a greater degree of confidence in the judicial process. Hence, the Chief Justices of the High Courts should be commended to consider the adoption of live-streaming both in the High Courts and in the district judiciaries in phases, commensurate with available resources and technical support. The High Courts would have to determine the modalities for doing so by framing appropriate rules."*

**11.** If the concept of an "open court" can extend beyond physical walls, there is no reason in principle why the concept of "a Court" itself cannot.

**12.** The statutory scheme points in the same direction. Even under the Code of Criminal Procedure, 1973, Section 317 empowered the Court to dispense with the personal attendance of the accused where such attendance was "*not necessary in the interests of justice*", while Section 273 recognised that proceedings could lawfully continue even when personal attendance stood dispensed with, so long as the accused was represented through counsel.

**13.** The Bharatiya Nagarik Suraksha Sanhita, 2023 has now placed the matter beyond doubt. Section 355 expressly declares that personal attendance of the accused includes attendance through



audio-video electronic means. Section 530 further provides that all trials, inquiries and proceedings under the Sanhita, including examination of complainants and witnesses, recording of evidence and appellate proceedings, may be held in electronic mode. Significantly, Section 2(a) itself assigns an expansive meaning to "*audio-video electronic*" so as to include video conferencing and recording of evidence. The statutory scheme, therefore, does not treat virtual participation as an exceptional deviation from ordinary procedure. On the contrary, it incorporates electronic presence into the procedural architecture of criminal justice itself.

**14.** Thus, both under the earlier procedural law and under the present statutory framework, the concept of attendance before the Court is not confined to rigid physical presence inside the courtroom. What the law insists upon is effective submission to the authority and process of the Court. That requirement can, in an appropriate case, be duly satisfied through video conferencing.

**15.** These provisions are not incidental as they reflect a clear legislative intent that the process of the court may, where appropriate, extend beyond a physical setting. They reflect a considered legislative judgment that the courtroom of the twenty-first century is not bounded by brick and mortar.



**16.** India is a vast country, and the administration of justice must remain alive to the realities of distance and accessibility. Justice is not something that is delivered only at the end of a proceeding; it must be present throughout its course, shaping the manner in which the process itself unfolds. To insist, for instance, that a party travel several hundred kilometres for a brief hearing of a few minutes, when the same purpose can be served without such burden, is to allow procedure to overshadow fairness. This Court cannot endorse such a result. It is the duty of this Court, and indeed of the judiciary as a whole, to ensure that participation in the trial is secured in a manner that is just, fair and reasonable to all.

**17.** I hold, therefore, that the word “Court” as used in the condition of the Supreme Court’s order is capable of including both the physical courtroom and a virtual courtroom constituted under the Video Conferencing Rules. In the present statutory context, it must be understood in that broader sense. The condition requires the petitioner to be present before the trial Court, not necessarily within the physical premises of the Court. The distinction is material.

**18.** The next step in the analysis is to ask whether appearance through video conferencing amounts to “presence” within the meaning of the bail condition. On this question, the law admits of no serious debate.



19. The locus classicus is *State of Maharashtra v. Praful B. Desai*<sup>2</sup>. The two-Judge Bench, speaking through Dr. Justice A.R. Lakshmanan, was called upon to decide whether a witness who deposes through video conferencing can be said to have been examined “in the presence of the accused” as required by Section 273 of the Code of Criminal Procedure, 1973. The Court’s reasoning deserves reproduction. At paragraphs 16–18, the Court held as follows:

*“Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you—i.e. in your presence. In fact, he/she is present before you on a screen. Except for touching, one can see, hear and observe as if the party is in the same room. In video conferencing, both parties are in presence of each other.”*

20. The Court went further and held as follows:

*“The submissions of Respondent’s counsel are akin to an argument that a person seeing through binoculars or telescope is not actually seeing what is happening. It is akin to submitting that a person seen through binoculars or telescope is not in the ‘presence’ of the person observing.”*

21. The analogy is apt and, with respect, difficult to dispute. The Court held that so long as the accused and or his pleader is present when evidence is recorded through video conferencing, such

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<sup>2</sup> (2003) 4 SCC 601.



evidence is recorded “in the presence” of the accused and satisfies the requirement of Section 273 of the Code of Criminal Procedure. The recording of such evidence, it was further held, is in accordance with the procedure established by law.

22. Perhaps the most significant endorsement of virtual appearance in the specific context of *accused persons* came in ***Krishna Veni Nagam v. Harish Nagam***<sup>3</sup>. There, the Supreme Court directed the use of video conferencing facilities in matrimonial and family law cases to ease the hardship of parties compelled to travel long distances for court appearances. At para 14, the Court observed:

*“One cannot ignore the problem faced by a husband if proceedings are transferred on account of genuine difficulties faced by the wife. The husband may find it difficult to contest proceedings at a place which is convenient to the wife. Thus, transfer is not always a solution acceptable to both the parties. It may be appropriate that available technology of video conferencing is used where both the parties have equal difficulty and there is no place which is convenient to both the parties. We understand that in every district in the country video conferencing is now available. In any case, wherever such facility is available, it ought to be fully utilized and all the High Courts ought to issue appropriate administrative instructions to regulate the use of video conferencing for certain category of cases. Matrimonial cases where one of the parties resides outside*

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<sup>3</sup> (2017) 4 SCC 150



*court's jurisdiction is one of such categories. Wherever one or both the parties make a request for use of video conference, proceedings may be conducted on video conferencing, obviating the needs of the party to appear in person. In several cases, this Court has directed recording of evidence by video conferencing."*

**23.** The principle that emerges is clear. The law recognises that a person appearing through video conferencing is, for all legal purposes, present before the court. The person can see and hear the Judge, and can address the Court in real time. The authority of the Court extends equally to such appearance as it does to one made in person. What the law requires is submission to the Court's process, not physical presence within the courtroom.

**24.** The learned Additional Sessions Judge rejected the petitioner's application on the view that the condition of remaining present before the trial Court requires physical presence. This view is untenable. It overlooks the Video Conferencing Rules, 2025, which permit appearance through electronic means at all stages, and is contrary to settled precedents that recognise such appearance as valid presence before the Court. While permission may be declined on facts, it cannot be rejected as a matter of principle. A proper reading therefore requires that "presence before the Court" includes virtual presence where permitted.



**25.** The purpose of requiring the accused to remain present on each date is to secure his availability and cooperation with the trial, not to impose a burden before conviction. In the present case, the petitioner, serving as Registrar of Cooperative Societies, Odisha, is required to travel from Bhubaneswar to Malkangiri, a distance of about 650 kilometres, resulting in the loss of two to three working days for each hearing.

**26.** There is a clear irony in this arrangement. The State, which prosecutes the petitioner, is at the same time his employer, and it is the State itself that bears the consequence of his repeated absence from official duties. Such disruption serves no useful purpose when the object of the condition is merely to ensure participation in the trial. That object can be fully achieved, and far more efficiently, by permitting the petitioner to appear through video conferencing.

**27.** This unnecessarily affects the petitioner and also disrupts public administration, as the State, which is prosecuting him, is also deprived of his services. Where the object of the condition is to secure participation in the trial, that purpose can be equally achieved, and more efficiently, by permitting appearance through video conferencing.

**28.** The petitioner does not seek exemption from appearance. He has complied with the condition imposed by the Supreme Court and



continues to do so. What he seeks is permission to remain present through a mode recognised by law. The distinction is important. Appearance through video conferencing is not absence but presence in a different form, where the petitioner remains before the Court, subject to its authority, responsive to its directions, and fully within its control.

**29.** In this view of the matter, the condition of remaining present before the trial Court cannot be read as insisting on physical attendance in every case. The requirement is satisfied so long as the petitioner is before the Court in a manner recognised by law, able to participate in the proceedings and subject to its authority. Where such presence is secured through video conferencing, with the permission of the Court, the condition stands complied with.

**30.** For the foregoing reasons, the CRLMC is allowed. The impugned order dated 14.10.2025 passed by the learned Additional Sessions Judge, Malkangiri in CT Case No. 85 of 2025 is hereby **set aside**.

**31.** The following directions are issued:

- a) The petitioner is permitted to appear before the learned Additional Sessions Judge, Malkangiri in CT Case No. 85 of 2025 through video conferencing from a designated Court point at Bhubaneswar or such other place as may be permitted by the trial Court, on each date of hearing.



- b) Such appearance through video conferencing shall be treated as sufficient compliance with the condition imposed by the Supreme Court in SLP (Criminal) No. 7877 of 2025 that the petitioner shall remain present before the trial Court on each date of hearing.
  - c) It shall be open to the trial Court, in its discretion, to require the physical presence of the petitioner on such dates as it may consider extremely unavoidable in the interest of justice.
  - d) The modality and manner of appearance through video conferencing shall be regulated by the learned trial Court in accordance with the applicable Rules.
  - e) The petitioner shall continue to cooperate with the trial and shall not misuse the liberty granted.
- 32.** The CRLMC stands disposed of, accordingly.

*( Dr. Sanjeeb K Panigrahi )*  
*Judge*

*Gitanjali*