

07.
12.09.2025
Bd.
Ct. 29

CRR 2386 of 2025

**Shankar Kumar Basu
Vs.
Tamalika Chanda**

**Mr. Kaushik Gupta
Mr. Anirban Tarafdar
Mr. Sahil Kabir**

... for the petitioner.

The petitioner herein being aggrieved with the order dated 24th April, 2025 preferred the present application wherein the court below had rejected the petitioner's prayer for exemption from personal appearance under section 228 of the Bharatiya Nagarik Suraksha Sanhita , 2023.

Learned counsel appearing for the petitioner submits that it is well within the power of the learned Magistrate to dispense with the personal appearance of an accused either throughout or at any particular stage of proceedings in a summons case, if the Magistrate finds that the insistence of his personal presence would itself inflict enormous suffering or tribulations on him. He further submits that the learned Magistrate while rejected the said application has erred in law as well as in facts by holding that grounds stated in the application under section 228 of the BNSS based on which the petitioner sought for exemption from personal appearance, are insufficient and thereby directed the petitioner herein to appear in person on the next date.

Having heard learned counsel appearing on behalf of the petitioner, it appears that in the impugned order the court below while rejecting the said application hold that the trial has not yet been commenced and the case must be proceeded under the warrant triable procedure for which evidence before charge is

required to be recorded and he further held that there is no provision for granting an exemption from personal appearance before obtaining bail and there is no provision in the Code of Criminal Procedure requiring the accused to take bail by seeking exemption from personal appearance before the court.

In this context learned counsel for the petitioner relied upon the judgment of **Bhaskar Industries Limited -vs- Bhiwani Denim & Apparels Ltd. & Ors.** reported in **AIR 2001 SC 3625** and also the judgment of **Maneka Sanjay Gandhi and Anr. -vs- Rani Jethmalani** reported in **1979(4) SCC 167** and contended that the power of the Magistrate to grant exemption from personal appearance should be exercised liberally. He further relied upon the judgment of **Sharif Ahmed and Anr. -vs- State of Uttar Pradesh and Anr.** and contended that the trial court's observation that there is no provision for granting exemption from personal appearance prior to obtaining bail is not correct as the power to grant exemption from personal appearance under the Code should not be read in a restrictive manner as applicable only after the accused has been granted bail.

Having heard learned counsel appearing on behalf of the petitioner the application is admitted.

Petitioner is directed to serve a copy of application upon the opposite party through speed post intimating next date of hearing and to file affidavit of service on the returnable date.

Having heard learned counsel for the petitioner and that the petitioner has made out an arguable case which requires adjudication let the execution of the impugned order dated 24th

April, 2025 be stayed till the end of November, 2025 or until further order, whichever is earlier.

Let the matter be listed on 21st November, 2025 under the heading "Contested Application".

(Dr. Ajoy Kumar Mukherjee, J.)