

Mohammad Shamshad Ansari vs Directorate Of Enforcement Lko. Zonal ... on 28 February, 2025

Author: Rajesh Singh Chauhan

Bench: Rajesh Singh Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12048

Court No. - 11

Case :- APPLICATION U/S 482 No. - 1439 of 2025

Applicant :- Mohammad Shamshad Ansari

Opposite Party :- Directorate Of Enforcement Lko. Zonal Officer Ashok Lko. U.P. Thru. Ass

Counsel for Applicant :- Dharmendra Kumar Yadav

Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Shri Mayank Sharma, Advocate holding brief of Shri Dharmendra Kumar Yadav, learned counsel for the applicant and Shri Kuldeep Srivastava, learned counsel for the Directorate of Enforcement.

2. By means of this application filed under Section 482 of the Cr.P.C./528 of B.N.S.S., the applicant has prayed to modify the impugned order dated 30.11.2024 passed by the Special Judge, Anti-Corruption, CBI (West)/E.D., Lucknow under Section 88 of Cr.P.C. (Now Section 91 of BNSS) in Sessions Case No.1321 of 2024 & 2249 of 2024, ECIR No.- ECIR/LKZO/05/2021 (ED Vs Mohammad Shamshad Ansari) to the extent, whereby it imposes the onerous condition that the

accused shall remain personally present before the court on each date fixed and shall not submit application for exemption from personal appearance by setting aside the said condition.

3. The precise contention of learned counsel for the applicant is that while passing the impugned order dated 30.11.2024, learned trial court has violated the specific condition being indicated by Hon'ble Apex Court in re: Tarsem Lal vs. Directorate of Enforcement, Jalandhar Zonal Office; (2024) 7 SCC 61. Learned counsel has stated that despite reproducing the operative direction of Hon'ble Apex Court in re: Tarsem Lal (supra), such directions have been ignored vide condition no.5 of the impugned order dated 30.11.2024.

4. Learned counsel has stated that in the operative portion in re: Tarsem Lal (supra), the Hon'ble Apex Court vide para 33.1 to 33.4 has held that once a complaint under Section 44 (1)(b) of the PMLA is filed, it will be governed by Sections 200 to 205 of the Cr.P.C. as none of the said provisions are inconsistent with any of the provisions of the PMLA.

5. Para 33.4 in re: Tarsem Lal (supra) further provides that in a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 of the CrPC.

6. Notably the aforesaid sections of Cr.P.C. deal the complaint filed against opposite parties/accused.

7. Para 33.1 to 33.4 read as under :

"33.1. Once a complaint under Section 44(1)(b) PMLA is filed, it will be governed by Sections 200 to 205 CrPC as none of the said provisions are inconsistent with any of the provisions of PMLA;

33.2. If the accused was not arrested by ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued;

33.3. After a summons is issued under Section 204 CrPC on taking cognizance of the offence punishable under Section 4 PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 CrPC;

33.4. In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 CrPC;"

8. In light of the aforesaid directions, learned counsel for the applicant has stated that if after submitting bond under Section 88 of the Cr.P.C. by appearing in person before the court and after executing and verifying such bonds, accused/applicant appears before the court through counsel, there may not be any legal restriction on his such appearance. There might be couple of reasons not to appear in person before the court concerned and if any specific application assigning the reason is filed, the special court may grant exemption.

9. Learned counsel has stated that in the present case, the applicant has already appeared before the special court at the time of submitting bonds and has given undertaking that in such case his appearance would be proper, but that appearance does not mean his personal appearance inasmuch as the representation of the applicant may be treated sufficient if his counsel appears on the date fixed.

10. He has further stated that if on any date, the personal appearance of the applicant is required by the special court and specific order to that effect is passed, the applicant shall appear in person before the court on that date and if he is unable to appear on that date on any specific reason, he would file an application for exemption of his personal appearance.

11. In the light of the aforesaid submissions, learned counsel for the applicant has drawn attention of this Court towards condition no.5 of the impugned order dated 30.11.2024, whereby the special court categorically directed the applicant that he shall remain present personally before the court on each and every date and he shall not file any exemption application.

12. Learned counsel has reiterated that the aforesaid condition no.5 of the impugned order is violative of the condition no. 33.4 in re: Tarsem Lal (supra), therefore, such condition may be modified and the applicant undertakes that he shall appear before the special court strictly in accordance with law and if on any date his personal appearance is required and such order is passed, either he shall appear before the court concerned on that date or he may file appropriate application apprising the reason as to why he is unable to appear personally and that application may be dealt under condition no. 33.4 in re: Tarsem Lal (supra).

13. Per contra, Shri Kuldeep Srivastava, learned counsel for the Enforcement Directorate has drawn attention of this Court towards paragraph nos.23 and 24 in re: Tarsem Lal (supra) by submitting that in light of the aforesaid paragraphs, personal appearance of the applicant would be required since he has filed his bond under Section 88 of the Cr.P.C. For convenience, paragraph nos.23 and 24 read herein-below:

"23. Therefore, if a warrant of arrest has been issued and proceedings under Section 82 and/or 83 CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88. Section 88 is indeed discretionary. But this proposition will not apply to a case where an accused in a case under PMLA is not arrested by ED till the filing of the complaint. The reason is that, in such cases, as a rule, a summons must be issued while taking cognizance of a complaint. In such a case, the Special Court may direct the accused to furnish bonds in accordance with

Section 88 CrPC.

24. Now, we come to the issue of whether an order of the court accepting bonds under Section 88 amounts to grant of bail. If an accused appears pursuant to a summons issued on the complaint, he is not in custody. Therefore, there is no question of granting him bail. Moreover, even if the accused who appears before the court does not offer to submit bonds under Section 88 CrPC, the court can always direct him to do so. A bond furnished according to Section 88 is an undertaking to appear before the court on the date fixed. The question of filing bail bonds arises only when the court grants bail. When an accused furnishes a bond in accordance with Section 88 CrPC for appearance before a criminal court, he agrees and undertakes to appear before the criminal court regularly and punctually and on his default, he agrees to pay the amount mentioned in the bond. Section 441 CrPC deals with a bond to be furnished by an accused when released on bail. Therefore, in our considered view, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail."

14. Shri Kuldeep Srivastava has stated that in para 24, Hon'ble Apex Court has observed that even if the accused, who appears before the court, does not offer to submit bonds under Section 88 of Cr.P.C., the court can always direct him to do so. The Hon'ble Apex Court further observed that the question of filing bail bonds arisen only when the court grant bail. When an accused furnished bail bonds in accordance with Section 88 of the Cr.P.C. for appearance before the criminal court, he agrees and undertakes to appear before the criminal court regularly and punctually and on his default to pay the amount mentioned in the bond.

15. Shri Kuldeep Srivastava has, therefore, stated that in light of the aforesaid direction, the accused/applicant will have to appear regularly and punctually before the court concerned and such appearance would be his personal appearance, therefore, the condition no.5 of the impugned order is in conformity with the observations of Hon'ble Apex Court in para 24.

16. Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that unless and until the statute specifically provides for personal appearance of accused/applicant after furnishing/submitting bail bonds either under Section 88 of the Cr.P.C. or under Section 441 of Cr.P.C., he may not be compelled to appear on each and every date fixed before learned trial court.

17. If for any particular reason, personal appearance of the accused/applicant is required, learned trial court/special court may direct the accused/applicant to appear in person before learned trial court and if for any reason or under any compelling circumstances, he is unable to appear before the court concerned in person, he may file an exemption application seeking another date for his personal appearance and such exemption application may be considered and disposed of in light of the direction of Hon'ble Apex Court in para 33.4 in re: Tarsem Lal (supra).

18. It is needless to say that at the time of furnishing/submitting bail bond and sureties, the accused/applicant would appear in person and admittedly the accused/applicant appeared before the special court/trial court in person.

19. The Hon'ble Apex Court in para 24 in re: Tarsem Lal (supra) has not specifically observed that after furnishing bond under Section 88 of the Cr.P.C., the accused/applicant would appear personally on each and every date, but it has been indicated that the appearance of the accused/applicant would be required regularly and punctually and on his default, he would pay the amount mentioned in the bond, meaning thereby if on the date fixed neither accused/applicant appears before the court nor his counsel appears before the court and no reason for the aforesaid non appearance is intimated to the court, the court may pass any coercive order strictly in accordance with law.

20. Had the intention of Apex Court been such that on each and every subsequent dates, the accused/applicant would appear in person, condition no. 33.4 in re: Tarsem Lal (supra), which has been quoted in the impugned order, would have not been indicated, wherein the Apex Court has categorically directed that the accused/applicant would appear before the special court on the date fixed and on sufficient cause being shown, the special court can grant exemption from personal appearance to the accused by exercising power under Section 205 of the Cr.P.C.

21. Therefore, the special court/trial court may not impose such condition snatching the right of the accused/applicant to file exemption application, if he is having any cogent reason not to appear in person before the court. If accused/applicant has engaged his Advocate, such Advocate shall attend the court proceedings on behalf of the accused/applicant and that should be treated appearance of the accused/applicant through counsel, however, if the personal appearance of the accused/applicant is required for any special or particular reason, the accused/applicant would appear before the special court/trial court pursuant to such order.

22. Therefore, in view of above, without interfering in the impugned order dated 30.11.2024 passed by the Special Judge, Anti-Corruption, CBI (West)/E.D., Lucknow under Section 88 of Cr.P.C. (Now Section 91 of BNSS) in Sessions Case No.1321 of 2024 & 2249 of 2024, ECIR No.- ECIR/LKZO/05/2021 (ED Vs Mohammad Shamshad Ansari), I hereby modify the condition no.5 of the impugned order, by invoking my power under Section 528 of B.N.S.S., to the effect that the accused/applicant/his counsel shall remain present in the court on the date fixed and if on any date the personal appearance of the accused/applicant is required and the specific order to that effect is passed by the special court/trial court, either the accused/applicant shall appear in person or if he is unable to appear in person on particular date pursuant to that order for any cogent reason, he may file an application seeking exemption of his personal appearance. Such exemption for any particular reason may be accepted, but consecutive applications to that effect avoiding personal appearance before the court concerned despite specific order having been passed by the special court/trial court indicating the reason would not be accepted.

23. In view of the aforesaid terms, this applicant is disposed of.

.

[Rajesh Singh Chauhan, J.] Order Date :- 28.2.2025 Anupam S/-