

# Ashok Kumar vs The State Of Madhya Pradesh Through ... on 31 May, 2024

**Author: Prem Narayan Singh**

**Bench: Prem Narayan Singh**

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IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
CRR No. 2610 of 2024  
(ASHOK KUMAR Vs THE STATE OF MADHYA PRADESH THROUGH ...)

Dated : 31-05-2024

Shri Lokesh Kumar Bhatnagar, learned counsel for the Petitioner

Shri Surendra Gupta, learned Govt. Advocate for the respondent

Heard on the question of admission.

2. Admit.

3 . Heard on I.A.No.8897/2024, which is an application filed by the petitioner seeking exemption from surrendering. Also Heard on I.A. No.8471/2024, an application under Section 397(1) of Cr.P.C for suspension of sentence and grant of bail to the petitioner has been convicted by 1st Addl. Sessions Judge, Mahidpur in CRA.No.10/2024 vide judgment dated 16.05.2024, whereby conforming the order of JMFC dated 27.12.2023 in Criminal Case No.277/2016 for commission of offence punishable under Section 59 of Food Safety and Standard Act, 2006 and Rule 2011 for 3 months R.I. with fine of Rs.5000/- and in case of default of payment of fine amount, 1 month's additional R.I.

5. Learned counsel for the petitioner submits that since the petitioner is suffering from illness therefore, it can be treated as an exception case, petitioner be exempted from surrendering before the trial court and his application for suspension of sentence be allowed. He placed reliance upon the order dated 23.7.2019 passed by the coordinate Bench of this court in the case of Smt. Lata vs. Manjul wherein the contention has been raised by the learned counsel for the petitioner placing reliance upon the judgment of the Apex court in the case of Vivek Rai & Anr. vs. High Court of Jharkhand , (2015) 12 SCC 86, in light of the aforesaid judgment it was submitted that Rule 48 of the High Court of M.P. Rules, 2008 is pari materia with the Rule 159 of Jharkhand High Court. In this Rule also the applicant is required to be surrendered before the trial Court and declaration to that effect should be filed along with revision memo while interpreting the said Rule. In support of his contentions, learned counsel relied upon the judgment dated 14.12.2023 passed by Hon'ble Supreme Court in the case of case of Manik Hiru Jhangiani vs. State of M.P. reported as 2023 INSC 1078 (Cr.A. No.3864/2023) so also the judgment passed by Co-ordinate Bench of this Court in the case of Suresh Sharma & Anr. Vs. State of Madhya Pradesh reported in 2024(1) FAC 291.

6. The Apex Court in the case of Vivek Rai (Supra) has held that this rule does not affect the inherent powers of the High Court to exempt the applicant from surrendering in exceptional cases.

7. In light of the aforesaid, it is prayed that petitioner may be exempted from surrendering before the trial court as he is suffering from disease of which the related documents are available on record and, therefore, looking to his health and condition his case be treated as an exceptional case and he be exempted from surrendering before the trial court and application for suspension of jail sentence of the petitioner be allowed.

8. He further relied on the order passed by the High Court of Judicature at Bombay, Bench Aurangabad passed in Criminal Case No.42/2019 in the matter of Ramesh Murlidhar Sharma vs. State of Maharashtra & Anr.

9. Chapter X of Section 48 of the High Court of M.P. Rules, 2008 read thus :-

"48. A memorandum of appeal or revision petition against conviction, except in cases where the sentence has been suspended by the Court below, shall contain a declaration to the effect that the convicted person is in custody or has surrendered after the conviction. Where the sentence has been so suspended, the factum of such suspension and its period shall be stated in the memorandum of appeal or revision petition, as also in the application under Section 389 of the Cr.P.C."

An application under Section 389 of Cr.P.C shall, as far as possible, be in Format No.11 and shall be accompanied by an affidavit of the appellant/applicant or some other person acquainted with the facts of the case."

10. As per the rules which are framed by Jharkhand High Court Rule 159, are also requires surrender of the accused before the court below.

11. Considering the aforesaid Rules, the Hon'ble Supreme Court in Vivek Rai (supra) in para 10 and 11 has held as under :-

"10. Only further submission put forward is that inherent power of the Court to direct listing of the case by exempting the requirement of surrender has been taken away. It is pointed out that even in Supreme Court Rules prohibition against listing without surrender is not applicable if the court otherwise directs.

Such exception is not to be found in the impugned Rule.

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 exception 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 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."

12. As per the judgment passed by Hon'ble Apex Court in exercise of inherent powers of High Court, the High Court can consider it appropriate to exempt the accused from surrendering before the Court below having regard to the nature and circumstances of the case.

13. The present case is related to the offence under Section 59 of Food Safety and Standard Act, 2006 and the petitioner is suffering from disease, document of which are available on record hence it can be treated as an exceptional case, therefore, treating the case of the petitioner as exceptional, petitioner is exempted from surrendering before the trial court.

14. Thus, in the facts and circumstances of the case, without expressing any opinion on merits of the case, the application I.A.Nos.8897/2024 and 8471/2024 stand allowed. It is directed that subject to furnishing personal bond of Rs.50,000/- with one solvent surety in the like amount to the satisfaction of the trial court for his appearance before the Registry of this Court on 12.08.2024 and on all other subsequent dates, as may be fixed by the Registry in this behalf, the execution of substantial jail sentence imposed on the petitioner shall remain suspended, till the final disposal of this revision, subject to complying the condition mentioned above.

16. A copy of this order be sent to the Court concerned for its compliance.

17. Let record of the courts below be requisitioned.

(PREM NARAYAN SINGH) JUDGE sumathi