



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION ST. NO. 134 OF 2024

ASHWINI KUMAR SHARMA

..PETITIONER

VS.

1. THE STATE OF MAHARASHTRA
2. CENTRAL BUREAU OF INVESTIGATION
ANTI CORRUPTION BRANCH, MUMBAI

..RESPONDENTS

Mr. Dilip H. Shukla, for the Petitioner.
Mr. S.H. Yadav, APP for the State.
Mr. Kuldeep Patil, for Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 8, 2024

ORAL JUDGMENT:

1. Heard learned counsel for the petitioner and learned counsel for the respondent no.2-CBI. The petitioner is arraigned as an accused in FIR in connection with Criminal Special Case CBI No. 68 of 2013 pending before the Session Special CBI Court. The offence is under Sections 420, 120B, 419, 384 of the Indian Penal Code, 1860 read with Section 8 of the Prevention of Corruption Act, 1988. The challenge in this petition is to the impugned order dated 29/12/2023 which reads thus:

“Ld. SPP Shri Sandeep Singh for CBI is present. P.O. Shri Rajkumar Chavan for CBI is present. A-1 on bail

is absent. Adv. Prajapati a/w Adv. Murtuza Najimi i/b Adv. Dilip Shukla for A-1 are present. O-Ld. Adv. Murtuza Najimi for A-1 submitted that he has spoken to the son of the accused who is young boy and he showed his helplessness to produce his father who is suffering from various ailments due to accident. The matter is posted for judgment today. It seems that the Accused Ashwini Kumar will not attend the Court. Hence to secure his presence, NBW be issued. S. P. of CBI, ACB, Mumbai to carryout all safeguards while executing the NBW and production before the Court. Matter adjourned to 09-01-2024 for Judgment.”

2. The petitioner is issued with disability certificate which is at page 38 of the paper-book in respect of the head injury wherein it is recorded that he is suffering from 83% disability. In an earlier round of litigation where the petitioner had sought permission to record the evidence through video conferencing, this Court by order dated 03/11/2023 in Criminal Writ Petition Stamp No. 18758 of 2023 passed the following order.

“1. As directed by the previous order, the learned APP Mr. Nakhwa has placed on record a report from the City Civil and Sessions Court, Greater Mumbai in reference to whether the video-conferencing facility can be made available for examining the petitioner.

It is informed that the said facility is available in Court No.52 of City Civil & Sessions Court, and statement/evidence can be recorded through video conferencing.

2. Similarly, the counsel for the petitioner has also obtained instructions and he make a categorical statement that on a given date, when his evidence is to be recorded, he shall present himself in District Court, Panipat, and if necessary directions are issued

by this Court for recording his evidence through video-conferencing facility, his evidence can be recorded virtually.

2. The present Writ Petition is filed being aggrieved by an order dated 30/10/2023, passed by the Special Court for CBI.

The background facts would reveal that the petitioner is arraigned as accused no.1 in Special CBI Case No.68/2013 which is presently pending before the Special CBI Court since 2013 and the case is ripe for recording of evidence of the petitioner, who is an accused. However, on account of the fact that he met with an accident, he is bed-ridden and is in continuous medical consultation.

It is in this background an application was filed by the prosecution to ascertain his health condition.

While dealing with the said application, the learned Judge clearly recorded that the medical report reveal that the petitioner has not completely recovered and he has weakness in movements and it is also reported that his ailment relate to his brain and he finds it difficult to remember the details of the case, as a result of which the Addl. Sessions Judge, who is the seisin of the Sessions trial has directed the Panel of Doctors, AIMS Hospital to examine him and accordingly file a status report on or before 30/10/2023.

3. It is the specific submission of the learned counsel for the petitioner, that he is resident of Panipat (State of Haryana) and his travel to AIMS in New Delhi, would pose great difficulty for him, considering his health condition.

Even I do not see any propriety in asking him to be referred to New Delhi, if at all, his medical condition has to be assessed.

In any case, as I suggested, the counsel for the accused to ascertain whether the evidence can be recorded through video conferencing facility, and since a report from the City Civil & Sessions Court Greater Mumbai, is received, informing that the video conferencing facility is available, let the Addl. Sessions Judge, fix a date of recording of his evidence, some time in the second week of December 2023 and accordingly, communicate the date in advance to the petitioner, who shall then present himself before the Court through the online

facility, available with the District Court, Panipat.

Though I understand the difficulty in issuing direction to the Court which would fall outside my jurisdiction, in the interest of justice, the Principal District Judge, Panipat, is requested to permit the video conferencing facility to be availed by the petitioner for the purpose of recording of his evidence, and once the date is fixed by the Sessions Court in Mumbai, it shall be informed in advance to the concerned Officer or the District Judge at Panipat, and depending upon the availability of the video conferencing facility, with due consideration, the facility may be made available. If for some reason, this facility could not be made available on a particular date, by consultation, an appropriate date suitable for both the sides, should be fixed.

4. In the wake of the aforesaid direction, the order dated 30/10/2023 directing examination of the petitioner by AIMS Hospital is not necessary and hence, shall not be given effect to.

Needless to state that when the evidence is recorded, even the Advocate representing the petitioner shall also be permitted to appear in person before the Special Court. Hence, Writ Petition is allowed in the aforesaid terms."

3. So far as the physical condition of the petitioner is concerned, even CBI conducted the physical verification of the petitioner when it was revealed that the disability suffered by the petitioner was in fact in terms of what is recorded in the disability certificate. For convenience, the report of the physical verification of the petitioner is reproduced which reads thus :

"During verification, following observation have been made
Shaking of legs has been stabled, however, right

hand still shaking continuously and right shoulder has difficulty in movement.

Aswini sharma has been observed with weakness in movement for little distances accompanied/help by his family member.

Related to brain working/responding, Ashwini kumar has been hardly remembering details of any cases against him. However, he recall that he is having case in Bombay courts.

Further documents obtained from Manan Sharma (son) revealed that:-

Orthopedies :- he has minimal improvement in walking however (Dr Ashish Chaudary) he is not fit to walk. Independently

Neuro :- he is a patient of subcortical lesions and he is not responsive to make of queries asked and need more time for improvement.

Madhukar Bhardwaj”

4. Section 313 statement has been recorded through video conferencing and now the case is posted for judgment. Since the petitioner is not remaining physically present, the trial Court issued a non bailable warrant. Chapter XXVII of the Code of Criminal Procedure (“CrPC”, for short) deals with the ‘judgment’. Sub-sections 4, 5, 6 and 7 of Section 353 which are important from the perspective of the present petition needs to be looked into, the relevant provisions read thus :

“(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought

up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.”

5. No doubt, the accused is required to attend the Court to hear the judgment pronounced having regard to the nature of the offence alleged against him. Learned Counsel Shri Patil appearing for the CBI vehemently opposed the present petition and insisted that in compliance with the mandate of the Section 353 of CrPC, the accused must attend the trial Court at the time when the judgment is pronounced.

6. Learned counsel for the petitioner on instructions submitted that having regard to the physical condition of the petitioner, it is very difficult for him to remain present in

the trial Court. It is submitted that till 2010 the petitioner remained physically present. Thereafter, the petitioner has been attending the trial through his lawyer after applying for exemption and has been remaining present through video conferencing as required. It is submitted that during these years, there has been no attempt on his part to abscond or has at any time misused his liberty while on bail. In any case, it is submitted that the physical condition of the petitioner is such that it is not possible for him to avoid the consequences of the judgment which may follow.

7. Learned counsel for the petitioner on instructions submitted if the judgment is pronounced by permitting the petitioner to attend through video conferencing, the petitioner shall not raise any plea in any proceeding that the judgment is invalid only by the reason that he was not physically present at the time of pronouncement of judgment. Statement is accepted. Furthermore, I am informed by Mr.Patil that the officers of the CBI are present for the purpose of the execution of the non-bailable warrant at Panipat where the petitioner is presently residing. Considering the peculiar facts of this case and having

regard to the medical evidence on record coupled with the fact that the evidence of the petitioner is recorded through video conferencing and as he is suffering from 83% physical disability, in my opinion, in the interest of justice, this is a fit case where the judgment can be pronounced by the trial Court by permitting the petitioner to present himself through video conferencing. Learned counsel submits that necessary arrangement will be made by the petitioner's son ensuring that the petitioner is taken to the District Court-Panipat for remaining present through video conferencing at the time of pronouncement of judgment by the trial Court. Learned counsel for the petitioner on instructions further states that he has no objection if the officers of the CBI who are at Panipat accompany the petitioner to the District Court at Panipat at the time of pronouncement of judgment. Upon pronouncement, the petitioner shall abide by further orders that may be passed by the trial Court. It is made clear that if any adverse order is passed against the petitioner, it is always open for the petitioner to seek appropriate recourse in accordance with law. I have already reproduced the order dated 03/11/2023 passed by this Court and the same

directions as in paragraph 3 of the said order shall apply even for tomorrow's date i.e. 09/01/2024 or any other date when the judgment is to be pronounced by the trial Court.

8. The petitioner to abide by the statement made. With these directions, the petition is disposed of.

9. The parties to act on the authenticated copy of this order.

(M. S. KARNIK, J.)