

[2022 LiveLaw \(SC\) 30](#)

**IN THE SUPREME COURT OF INDIA**

**PAMIDIGHANTAM SRI NARASIMHA; J.**

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 8160/2021; 07-01-2022

**MAHAVIR ARYA *VERSUS* STATE GOVT. NCT OF DELHI & ANR.**

**Supreme Court Rules, 2013 ; Order XXII Rule 5 - Application seeking exemption from surrendering is not required to be filed along with a special leave petitions against cancellation of bail orders - Order XXII Rule 5, applies only to cases where the petitioner is 'sentenced to a term of imprisonment' and it cannot be confused with simple orders of cancellation of bail.**

*For Petitioner(s) Mr. Yashpal Singh Rangji, Adv. Mr. V. K. Shukla, Adv. Mr. Sugam Mishra, Adv. Mr. SPM Triptahi, Adv. Mr. Jayant Bhattacharyya, Adv. Ms. Beena, Adv. Miss Saket Gautam, Adv. Mr. Satish Kumar, AOR*

*For Respondent(s) Mr. Gurmeet Singh Makker, AOR Mr. Vibhu Shankar Mishra, Adv. Mr. B. K. Pal, AOR Mr. Vivek Sharma, Adv.*

**ORDER**

When these applications for condonation of delay in making deposit and restoration of the application for exemption from surrendering were listed before me, I enquired from the advocate for the petitioner the need for seeking an exemption from surrendering when the order impugned is only a case of cancellation of bail. He says that the Registry normally insists on filing such an application and he has no option. When I informed the counsel that the Rule applies only for Criminal Appeals or Special Leave Petitions where the petitioner is '*sentenced to a term of imprisonment*' and not to SLP's against cancellation of bail, some lawyers spoke from the Bar and said that they find it prudent to file such applications instead of arguing with the Registry without any success. This is completely unacceptable.

The officers of the Registry must know the Supreme Court Rules like the back of ones hand. Order XXII Rule 5, applies only to cases where the petitioner is '*sentenced to a term of imprisonment*' and it cannot be confused with simple orders of cancellation of bail. What is disturbing is that a large number of such applications for exemptions are routinely filed when there is no need to adopt such a procedure at all. This has serious consequence of increasing the burden of lawyers, judges and even the Registry. This is apart from loss of respect for law.

I find it necessary to note this position after Sri Raghenth Basant, member of the Bar, has brought to my notice successive orders passed by the Supreme Court holding that applications for surrender were wrongly filed and that there was no need to insist on filing of such applications. The officers could have atleast take note of the following judicial orders, ***Kapur Singh Vs. State of Haryana 2021 SCC Online 586, Dilip Majumder v. Nikunja Das & Anr.*** SLP (Crl) Dy. No.6517/2020, ***Vivek Rai v. High Court***

*of Jharkhand (2015) 12 SCC 86, K.M. Nanavati v. State of Bombay AIR 1961 SC 112* (para 15) and *Mayuram Subramanian Srinivasan v. CBI (2006) 5 SCC 752* (paras 16 to 18), to name a few.

Registrar (Judicial) is directed to issue formal instructions to the concerned filing, scrutiny and numbering Sections with respect to matters in which Order XX, Rule 3 and Order XXII, Rule 5 will apply. The officer must also instruct them not to insist on such applications in other cases.

Coming back to the facts of the present case, we note that the petitioner was arrested for an offence under Section 420 read with 34 IPC. He was granted bail by the High Court subject to payment of an amount. Upon his failure to pay the amount the High Court recalled its order granting bail and ordered the petitioner to surrender. An application to recall that order came to be dismissed by the impugned order.

A Special Leave Petition was filed against the above referred order. Along with it an application for exemption from surrendering is also filed. The advocate should have known that such an application was totally unnecessary. Chamber Judge granted exemption. However, as notice was issued on the application, without a direction to list the case before the regular Court for admission, the matter kept coming before the Chamber Court. On 10.08.2021 the Chamber Judge directed that the petitioner must pay balance money within four weeks, if not, the application for surrendering will be dismissed without reference to the Court. As the amount was not deposited it was assumed that the application stands dismissed without reference to the Court. It is for this reason that the Advocate filed the present application for restoration.

All this happened when there is no mandate in law to seek an exemption from surrendering at all. The Constitutional remedy under Article 136 is available to the petitioner without surrendering as this is not a case where the accused is 'sentenced'.

As this is not a case requiring surrender, there was never a need to file the application for exemption from surrendering. However, as an order directing dismissal of the so called application for exemption from surrendering was passed, I shall recall that order and direct the case to be listed before the Regular Bench for admission and disposal.

Delay in filing the application for paying balance amount is condoned. Application (I.A. No.123405/2021) for restoration of I.A. No.44732/2021 is allowed.

List the case before the Regular Bench for admission.

A copy of this order be sent to Secretary General, Supreme Court and Secretary, Supreme Court Advocates on Record Association (SCAORA).