IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. NO. 1164 of 2022

Sunil Shah, ,
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..... Petitioner

Versus

Union of India, through the Central Bureau of Investigation, having its office at Behind Court Compound, Ranchi, P.O. G.P.O., P.S. Kotwali, District-Ranchi (Jharkhand)

..... Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Sumeet Gadodia, Advocate
Mrs. Shilpi Sandil Gadodia, Advocate
Mr. Ritesh Kumar Gupta, Advocate
Mrs. Aanya, Advocate
For the C.B.I. : Mr. Anil Kumar, A.S.G.I.
Ms. Chandana Kumari, A.C. to A.S.G.I.

11/Dated: 05/07/2023

Heard Mr. Sumeet Gadodia, learned counsel for the petitioner and Mr. Anil Kumar, learned A.S.G.I, appearing on behalf of the Union of India.

2. This petition has been filed for quashing the order dated 11.04.2022 passed in Miscellaneous Application No. 1578 of 2021 by learned AJC, XVIII-cum-Special Judge, CBI, Ranchi wherein the application filed by the petitioner under section 205 of the Cr.P.C. for dispensing with personal appearance of the petitioner has been rejected in connection with R.C. Case No. 07(A)/2018-D, pending in that Court.

3. Mr. Sumeet Gadodia, learned counsel for the petitioner straightway draws the attention of the court to order dated 01.10.2021 whereby the learned court has taken cognizance against the petitioner and other accused persons under sections 7, 8, 12 & 13(2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 and section 120-B of the Indian Penal Code. He submits that as soon as the petitioner came to know about the summon he appeared before the learned court and filed the petition under section 205 of Cr.P.C. for dispensing with personal attendance giving the undertaking that the petitioner will not hide his identity, he will not dispute examination of the witnesses in his absence and in presence of the lawyer appointed

by him and at any time and if the requirement is there and call by the court, he will appear. He submits that in spite of that the learned court has rejected the petition of the petitioner relying on judgment of this Court in the case of **" *P.B. Mishra Vs. State of Jharkhand" (2003) 2 JLJR 598 (Jhr)***. He submits that the learned court has rejected the petition only on the ground that only trivial case said application can be applied whereas the petitioner is facing serious nature of charge, the said petition is not maintainable. He further draws the attention of the Court to the chargesheet annexed with the petition and submits that in the chargesheet it has been disclosed that the petitioner was not arrested during investigation and thereafter cognizance has been taken and once the petitioner has appeared by way of filing the said petition when he was not arrested at least said petition was required to be allowed. By way of referring the allegation in the chargesheet he submits that only allegation against the petitioner is that he is beneficiary of certain act of one Tapas Kumar Dutta who happens to be the Principal Commissioner of Income Tax. He further submits that so far as tax liability is concerned, the petitioner has already deposited the tax liability to the tune of Rs. 12135490/-. To substantiate this argument, he draws the attention of the Court to Annexure-14 which is document relating to tax deduction and deposition. He further submits that the Parliament promulgated ***'The Direct Tax Vivad Se Vishwas Act, 2020'*** with an objective of providing resolution disputed tax and the matters connected therein published in the gazette notification dated 17th March, 2020. He submits that said declaration was not accepted by the authority concerned, the petitioner moved before this court and this Court has been pleased to accept the said declaration filed by the petitioner and assesse company by order dated 14.07.2022 which has been brought on record by way of rejoinder to the counter-affidavit at page 65. In this background he submits that the allegations so far as petitioner is concerned with regard to evading of certain tax however, the petitioner after receiving summon appeared before the learned court and filed a petition under section 205 of Cr.P.C. He further submits that now the criminal law and arrest procedure has further been developed by the different courts and particularly by the Hon'ble Supreme Court. In the recent judgment of the Hon'ble Supreme Court in the

case of ***"Satender Kumar Antil Vs. Central Bureau of Investigation" (2022) 10 SCC page 51*** in para 86 and 89 the Hon'ble Supreme Court has held as under:-

> ***"86.*** *Now we shall come to Category C. We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.*
> ***89.*** *We may clarify on one aspect which is on the interpretation of Section 170 of the Code. Our discussion made for the other offences would apply to these cases also. To clarify this position, we may hold that if an accused is already under incarceration, then the same would continue, and therefore, it is needless to say that the provision of the Special Act would get applied thereafter. It is only in a case where the accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the court. Similarly, we would also add that the existence of a pari materia or a similar provision like Section 167(2) of the Code available under the Special Act would have the same effect entitling the accused for a default bail. Even here the court will have to consider the satisfaction under Section 440 of the Code."*

4. Relying on the said judgment he submits that the Hon'ble Supreme Court has held that it is needless to say that the provision of Special Act would get applied thereafter only in a case where the accused either not arrested consciously by the prosecution or arrested and enlarged on bail. He submits that there is no need of further arrest. He further submits that said judgment was further considered by the Hon'ble Supreme Court in Miscellaneous Application No.2034/2022 in M.A. No. 1849 of 2021 in view of the fact that inspite of the order of Hon'ble Supreme Court, the Courts were not following the guidelines and directions were issued. The said direction is quoted here-in-below:-

> *"(ii) Counsels have produced before us a bunch of orders passed in breach of the judgment in the case of Satender Kumar Antil Vs. CBI & Anr. only as samples to show how at the ground level despite almost 10 months passing, there are a number of*
> *aberrations. It is not as if these judgments have not been brought to the notice of the trial Courts and in fact have even been noted, yet orders are being passed which have a dual ramification i.e., sending people to custody where they are not and creating further required to be so sent litigation by requiring the aggrieved parties to move further. This is something which cannot be countenanced and in our view, it is the duty of the High Courts to ensure that the subordinate judiciary under their supervision follows the law of the land. If such orders are being passed by some Magistrates, it may even require judicial work to be withdrawn and those Magistrates to be sent to the judicial academies for upgradation of their skills for some move time.*

Amongst the illustrative orders, very large number of them happens to be from Uttar Pradesh and we are informed that orders passed specially in Hathras, Ghaziabad and Lucknow Courts seem to be in ignorance of this law. We call upon the counsel for the High Court of Allahabad to bring this to the notice of the Hon'ble the Acting Chief Justice so that necessary directions are issued to ensure that such episodes don't occur, including some of the suggestions made by us above.

(iii)Another aspect which is sought to be pointed out by learned counsel is that not only is there a duty of the Court but also of the public prosecutors to plead correct legal position before the Court as officers of the Court. Illustrations are being given once again where the submissions of the public prosecutors are to the contrary. In this behalf Mr. Maninder Singh, learned senior counsel submits that even in an earlier order passed by this Court in Aman Preet Singh Vs. C.B.I. Through Director, 2021 SCC Online SC 941 this aspect was flagged as under:

"7. Learned counsel for the appellant has brought to our attention to the proceedings recorded on 26.08.2021 before the Magistrate to submit that the highhandedness of the respondent is apparent from the fact that the public prosecutor, despite these orders from this Court, sought to plead that the appellant had not been allowed any bail, non bailable warrants had been issued against him, the direction of this Court for the appellant not to be arrested did not mean that he could not be sent to judicial custody and since this Court observed that he could attend virtually till physical hearing started, which had by then resumed, he should be sent to judicial custody. We may only note all these submissions are completely inappropriate and indefensible. Neither did the learned Additional Solicitor General seek to contend except stating that those are only submissions. We expect a public prosecutor to be conscious of the legal position and fair while making submissions before the Court. We say no more as at least the Chief Judicial Magistrate understood the order clearly and thus did not agree with the submission of the public prosecutor."

Mr. S.V. Raju, learned ASG very fairly states that the Public Prosecutors are bound to bring the correct legal position before the Court and the C.B. I will issue directions to the public prosecutors in this behalf. In fact, we are of the view that all prosecuting agencies/State Governments/UTs should issue such directions to the Public Prosecutors so that neither in pleadings nor in arguments, is a stand taken contrary to the legal position enunciated by this Court. The circulation in this behalf should be made through the Director of Prosecution and training programmes be organized to keep on updating the Prosecutors in this behalf."

5. He further submits that in the said case learned A.S.G stated before the Court that the public prosecutor are bound to bring correct legal position before the Court and the C.B.I. will issue directions to the public prosecutors in this behalf. Relying on the said judgment, he submits that principle of arrest has been laid down by the Hon'ble Supreme Court and several directions have been issued and if such a situation was there the petitioner has suo motu appeared before the learned court by way of filing a petition under section 205 of Cr.P.C. and the learned court is required to allow the same. He further relied in the case of ***"Sidharth Vs. State of Uttar Pradesh & Another" (2022) 1 SCC 676.*** He relied on para 5, 6, 7 and 9 of the said judgment which is quoted hereinbelow:-

"5. *In High Court of Delhi v. CBI [High Court of Delhi v. CBI, 2004 SCC OnLine Del 53 : (2004) 72 DRJ 629] , the Delhi High Court dealt with an argument*

similar to the contention of the respondent that Section 170 CrPC prevents the trial court from taking a charge-sheet on record unless the accused is taken into custody. The relevant extracts are as under : (SCC OnLine Del paras 15-16 & 19-20)

> *"15. Word "custody" appearing in this section does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the investigating officer before the Court at the time of filing of the charge-sheet whereafter the role of the Court starts. Had it not been so the investigating officer would not have been vested with powers to release a person on bail in a bailable offence after finding that there was sufficient evidence to put the accused on trial and it would have been obligatory upon him to produce such an accused in custody before the Magistrate for being released on bail by the Court.*
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> *16. In case the police/investigating officer thinks it unnecessary to present the accused in custody for the reason that the accused would neither abscond nor would disobey the summons as he has been cooperating in investigation and investigation can be completed without arresting him, the IO is not obliged to produce such an accused in custody.*
>
> *19. It appears that the learned Special Judge was labouring under a misconception that in every non-bailable and cognizable offence the police is required to invariably arrest a person, even if it is not essential for the purpose of investigation.*
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> *20. Rather the law is otherwise. In normal and ordinary course the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by the accused to the investigating officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the investigating officer concerned or officer in charge of the police station thinks that presence of the accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out."*

6. *In a subsequent judgment the Division Bench of the Delhi High Court in High Court of Delhi v. State [High Court of Delhi v. State, 2018 SCC OnLine Del 12306 : (2018) 254 DLT 641] relied on these observations in High Court of Delhi [High Court of Delhi v. CBI, 2004 SCC OnLine Del 53 : (2004) 72 DRJ 629] and observed that it is not essential in every case involving a cognizable and non-bailable offence that an accused be taken into custody when the charge-sheet/final report is filed.*

7. *The Delhi High Court is not alone in having adopted this view and other High Courts apparently have also followed suit on the proposition that criminal courts cannot refuse to accept a charge-sheet simply because the accused has not been arrested and produced before the court.*

9. *We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet."*

6. Relying on the said judgment, Mr. Gadodia submits that earlier judgment of Delhi High Court was considered in para 9 and it has been held further

that in a case where the accused has not been arrested, there is no need of arresting at the time of filing chargesheet under section 170 of Cr.P.C. He further submits that the case of the petitioner is further fortified in view of judgment rendered by the Hon'ble Supreme Court in the case of ***"Sidharth" (supra).*** He further relied in the case of ***"Aman Preet Singh Vs. C.B.I." (2021) SCC Online SC 941*** wherein para 3 and 9 the Hon'ble Supreme Court has held as under:-

> ***"3.*** *An FIR No. RC16/S/2014, dated 05.06.2014, at PS, CBI/SCB/SPE, Kolkata was registered and during the investigation, the appellant before us had joined the investigation. The appellant approached this Court out of proceedings arising in respect of the plea seeking grant of anticipatory bail in Criminal Appeal No. 468/2021 which was disposed of on 06.05.2021. The said order reads as under:*
> *It cannot be disputed that the prosecution did not seek the interrogation of the appellant on or before filing of the charge sheet. Charge sheet has been filed. This being the position, learned counsel for the appellant confines the relief only to appear before the Trial Court and apply for regular bail and he be not arrested in that period of time.*
> *In the given factual situation, we grant protection to the appellant for a period of 8 weeks, within which he may apply for regular bail before the Trial Court and obtain necessary orders.*
> ***9.*** *In our view, the purport of Section 170, Cr.P.C. should no more be in doubt in view of the recent judgment passed by us in Siddharth v. State of Uttar Pradesh (Criminal Appeal No. 838/2021), 2021 SCC OnLine SC 615). In fact we put to learned senior counsel whether he has come across any view taken by this Court qua the said provision. Learned counsel also refers to judgments of the High Court which we have referred to in that judgment while referring to some judicial pronouncements of this Court on the general principles of bail. The only additional submission made by learned counsel is that while the relevant paragraphs of the judgment of the Delhi High Court in Court on its own Motion v. Central Bureau of Investigation (2004) 72 DRJ 629 have received the imprimatur of this Court, the extracted portions from the judgment of the Delhi High Court did not include para 26. The said paragraph deals with directions issued to the criminal Courts and we would like to extract the portion of the same as under:*
> *"26. Arrest of a person for less serious or such kinds of offence or offences those can be investigated without arrest by the police cannot be brooked by any civilized society. Directions for Criminal Courts:*
> *(i) Whenever officer-in-charge of police station or Investigating Agency like CBI files a charge-sheet without arresting the accused during investigation and does not produce the accused in custody as referred in Section 170, Cr.P.C. the Magistrate or the Court empowered to take cognizance or try the accused shall accept the charge-sheet forthwith and proceed according to the procedure laid down in Section 173, Cr.P.C. and exercise the options available to it as discussed in this judgment. In such a case the Magistrate or Court shall invariably issue a process of summons and not warrant of arrest.*
> *(ii) In case the Court or Magistrate exercises the discretion of issuing warrant of arrest at any stage including the stage while taking cognizance of the charge-sheet, he or it shall have to record the reasons in writing as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him.*
> *(iii) Rejection of an application for exemption from personal appearance on any date of hearing or even at first instance does not amount to non-appearance despite service of summons or absconding or failure to obey summons and the Court in such a case shall not issue warrant of arrest and may either give direction to the accused to appear or issue process of summons.*
> *(iv) That the Court shall on appearance of an accused in a bailable offence release him forthwith on his furnishing a personal bond with or without sureties as per the mandatory provisions of Section 436, Cr.P.C.*

(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail."

7. Relying on the said judgment rendered by the Hon'ble Supreme Court he submits that spirit of section 205 Cr.P.C. has not been rightly appreciated by the learned court particularly in the fact that the petitioner has stated before the learned court that he will not hide his identity and he will be represented through his lawyer on each and every date of proceeding and whenever requirement is there or on call upon by the Court, he will appear before the Court. He submits that the said application was erroneously rejected by the learned court. Relying on the case of ***"P.B. Mishra" (supra).***

8. Per contra, Mr. Anil Kumar, learned A.S.G.I. appearing on behalf of the C.B.I. submits that so far as principle with regard to Section 205 of Cr.P.C. is concerned that trial meant for judicial magistrate. Section 205 of Cr.P.C. power is not there in the Special Judge who is conducting trial as a Special Judge under the various provision of Special statute. He draws the attention of Court to section 9 of the Cr.P.C. and submits that Court of Sessions has been defined therein and they are being appointed by the High Court. By way of referring section 11 of the Cr.P.C. he submits that Court of Judicial Magistrate has been defined therein. Referring on two sections of the Cr.P.C. he submits that distinction between the Judicial Magistrate and Sessions Judge and in view of that 205 of Cr.P.C. is not attracted in the present case. He further submits that in view of sections 3, 4 and 5 and section 22 of the Prevention of Corruption Act, 1988 the entire Cr.P.C. is not applicable with regard to Special Judge who is conducting the trial and in that view of the matter section 205 of Cr.P.C petition itself was not maintainable before the Special Judge. Referring to section 3 of Prevention of Corruption Act he submits that power is there for appointing the special judges by the Central Government or the State Government. By way of referring Section 4 of the Prevention of Corruption Act he submits that cases triable by the

special judges procedure has been prescribed therein. By way of relying section 5 of the Prevention of Corruption Act he submits that procedure and powers of special judge has been defined. He draws the attention of the Court to section 22 of the Prevention of Corruption Act and submits that restrictions are there that for certain sections the Cr.P.C. would lie and in view of that section 205 of Cr.P.C. is not attracted. On these grounds he submits that 205 of Cr.P.C. petition itself was not maintainable before the Special Judge. He submits that the learned court has rightly rejected the petition under section 205 of Cr.P.C. and this Court may not interfere with the order passed by the learned court.

9. In reply Mr. Gadodia, learned counsel for the petitioner submits that in all these sections there is no restriction to the effect that entire Cr.P.C. will not apply so far the special statutes are concerned. He submits that Chapter 16 prescribes commencing of trial before the learned Magistrate and it starts from Section 304 Cr.P.C. and in view of section 207 of Cr.P.C. once police paper is supplied and trial starts from Chapter 19 wherein as a warrant case and that is continuity of the procedure in view of section 207 of Cr.P.C. He submits that Section 22 of the Prevention of Corruption Act itself speaks of that entire Cr.P.C. will apply with certain modification of some sections which has been prescribed in the sub section. He further submits that those section in view of sections 4 and 5 of the Cr.P.C. in the absence of any specific provision to the contrary affect any special or local law. He submits that Section 4 of the Cr.P.C. speaks of that even for the special Act the Cr.P.C. will apply and Section 5 of Cr.P.C. is savings section with regard to certain exception which may be carved out by the Special Act.

10. In view of above submissions of the learned counsel for the parties the Court has gone through the materials on record including the chargesheet as well as impugned order dated 11.04.2022. Admittedly, the petitioner was not named in F.I.R. In the investigation the name of the petitioner has come and chargsheet has been submitted against the petitioner on 31.12.2020. In the chargesheet itself it has been disclosed that the petitioner was not arrested during investigation. The allegation against the petitioner has been dealt with at para 16.18.10 of the chargesheet which

is quoted hereinbelow:-

> *"16.18.10) M/s Value Added Furturistic Managemont Pvt. Ltd.: The matter pertained to AY 2012-13 of the company. The controllor of the company is Shri Sunil Shah who got the PAN of the company transferred from Ward 1(3), Kolkata to Ward 3(2), Ranchi vide order dated 16.03.2016 in conspiracy with Shri Tapas Kumar Dutta. Investigation further revealed that even though the company had preferred appeal before CIT (Appeals) at Kolkata but Shri Tapas Kumar Dutta initiated the proceedings U/s, 264 of IT Act with sole intention to ensure favour to the company.*
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> *Shri Tapas Kumar Dutta subsequently passed the Revision Order U/s. 264 of IT Act on 28.03.2017. He set aside the original assessment order and directed the Assessing Officer for re-assessment. However, re-assessment for the A.Y. 2012-13 was pending as per record."*

11. Looking into the above allegation the Court finds that there is allegation against the petitioner that he was beneficiary of certain act of Tapas Kumar Dutta, the then Principal Commissioner of Income Tax and he was benefitted to that act. Further Annexure-14 of the petition speaks of deposition of tax to the tune of Rs. 12135490/- by the petitioner's company even the ***Direct Tax Vivad Se Vishwas Act, 2020*** was invoked by the petitioner which was not accepted by the authority concerned and the petitioner moved before this Court and by order dated 14.07.2022 the same was directed to be accepted. These are the admitted position with regard to allegation so far this petitioner is concerned. In this back ground the Court is required to consider as to whether section 205 of Cr.P.C. petition filed by the petitioner before the learned court was rightly appreciated by the impugned order or not. The Court is required to consider the arrest power subjected to the statutory, constitutional and human rights limitations. The wide-ranging amendments of the arrest law, perhaps for the first time in the colonial and the post-colonial era of governance, can be better appreciated in the light of the contemporary context: First, the Nirbhaya Gang rape incident followed by mass revulsion and demon-the strations that clearly established the breakdown of law and order and all-round failure of the Delhi Police Force; second, the Justice Verma Committee Report, followed by the Ordinance and the Criminal Law (Amendment) Act, 2013 that introduced several gender protective measures in the Penal Code; and third, the two-Judge Bench Supreme Court ruling in ***Arnesh Kumar v. State of Bihar (2014) 8 SCC 273*** that accorded judicial legitimisation to the arrest law amendments in right earnest. Particularly significant is the fallouts of the Nirbhaya Gang rape incident in respect to the disillusionment with the police agency in

the eyes of the highest judiciary, which has been reflected in the three notable rulings, namely, ***Lalita Kumari v. State of U.P. (2014) 2 SCC 1, Subramanian Swamy v. CBI (2014) 8 SCC 682 and Arnesh Kumar cases (supra).***

12. In the light of all these three judgments now the Hon'ble Supreme Court has further developed the arrest law so far as the criminal law is concerned in view of two of judgments relied by the learned counsel for the petitioner in the case of ***Satender Kumar Antil (supra) and Sidharth (supra).***

13. The question further remains that once an accused who has suo motu appeared before the learned court after receiving summons and filed petition under section 205 of Cr.P.C. fulfilling all the criteria of that section whether not allowing the said application will amount to contradiction of the recent judgment of the Hon'ble Supreme Court in the case of ***Satender Kumar Antil(supra) and Sidharth (supra)*** or not.

14. In the case of ***Satender Kumar Antil(supra)*** when the first direction of the Hon'ble Supreme Court was not fully taken care of by the different courts the Hon'ble Supreme Court has further taken of that matter under the said Miscellaneous Case as quoted in the argument of the learned counsel for the petitioner. In that case the learned A.S.G. has fairly stated before the Hon'ble Supreme Court that the correct legal position before will be explained by the C.B.I. to all the public prosecutors in this behalf. Although in these two cases the Hon'ble Supreme Court was considering the aspect of regular bail as well as anticipatory bail and 205 of Cr.P.C. was not subject matter before the Hon'ble Supreme Court although principle laid down therein, arrest can be considered for deciding the present case under 205 Cr.P.C.

15. Identical was the situation before the Hon'ble Supreme Court in the case of "***Puneet Dalmia V. Central Bureau of Investigation, Hyderabad (2020) 12 SCC 695*** wherein para 2, 2.1, 2.2, 4.3, 5 it has been held as under:-

> ***"2.*** *That the appellant is Accused 3 in the case pertaining to the charge-sheet bearing CC No. 12 of 2013 pending before the learned Principal Special Judge for CBI Cases, Hyderabad. That the appellant was summoned by the learned trial court vide order dated 13-5-2013 for the offences punishable under Sections 120-B read with Sections 420, 409 IPC and Sections 9, 12, 13(2) read with Sections 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. That, by an order dated 7-6-2019, the appellant has been granted the bail. However, pursuant to the directions issued by the High Court, the appellant is required to attend the learned trial court on every*

Friday. It is the case on behalf of the appellant-original Accused 3 that since 2013, the appellant has been remaining present before the learned trial court on every Friday.

2.1. *That the appellant submitted an application before the learned trial court under Section 205 CrPC for dispensing with his personal appearance/attendance. It was submitted on behalf of the appellant that he is the Director on the Boards of several companies and is preoccupied with the management and attending day-to-day affairs on account of business exigencies of the companies. It was also submitted on behalf of the appellant that for attending the learned trial court on every Friday, he is required to travel from Delhi to Hyderabad spending not less than two days. Therefore, it was the case on behalf of the appellant that on account of posting the case on every Friday, he has been facing undue hardship in meeting his business commitments, in addition to continuous financial loss being caused to him. Therefore, it was prayed to dispense with his appearance permitting his counsel Shri Bharadwaj Reddy to appear on his behalf.*

2.2. *The said application was opposed by the respondent CBI. It was submitted on behalf of CBI that the grounds on which the appellant has requested to dispense with his appearance before the learned trial court are not germane and cannot be a ground to dispense with his appearance before the learned trial court under Section 205 CrPC. It was also contended on behalf of CBI that the appellant is facing very serious charges/offences. The learned Principal Special Judge for CBI Cases, Hyderabad dismissed the said application. Aggrieved by the order passed by the learned trial court, the appellant preferred a petition before the High Court. By the impugned judgment [Puneeth Dalmia v. State, 2018 SCC OnLine Hyd 1903] and order, the High Court has dismissed the said petition and has confirmed the order passed by the learned trial court rejecting the application submitted by the appellant and has refused the exemption from personal appearance of the appellant before the learned trial court. Hence, the present appeal.*

4.3. *Now, so far as the reliance placed by the learned counsel appearing on behalf of the appellant upon the decisions of this Court in Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254] and Rameshwar Yadav [Rameshwar Yadav v. State of Bihar, (2018) 4 SCC 608 : (2018) 2 SCC (Cri) 585] is concerned, it is submitted by the learned Additional Solicitor General that the said decisions shall not be applicable to the facts of the case on hand looking to the graveness and seriousness of the offences involved. It is submitted that in Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254] , it was a case for the offence under Section 138 of the Negotiable Instruments Act and in Rameshwar Yadav [Rameshwar Yadav v. State of Bihar, (2018) 4 SCC 608 : (2018) 2 SCC (Cri) 585] , it was a case for the offences under Section 498-A IPC and Section 4 of the Dowry Prohibition Act. It is submitted that, in the present case, the allegations against the appellant are for the offences punishable under Section 120-B read with Sections 420 and 409 IPC and Sections 9, 12, 13(2) read with Sections 13(1)(c) and (d) of the Prevention of Corruption Act. Therefore, it is prayed to dismiss the present appeal.*

5. *Heard the learned counsel appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the appellant is required to appear before the learned trial court on every Friday and the appellant as such is appearing before the learned trial court on each and every Friday since 2013. Nothing is on record that at any point of time the appellant has tried to delay the trial. The appellant is represented through his counsel. The appellant is a permanent resident of Delhi. He is the Director on the Boards of several companies. The distance between Delhi and Hyderabad is approximately 1500 km. Therefore, the appellant sought for exemption from personal appearance before the learned trial court on each and every Friday and submitted the application under Section 205 CrPC and submitted that on all dates of adjournments, his counsel Shri Bharadwaj Reddy shall appear and no adjournment shall be asked for on his behalf. In Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254] and Rameshwar Yadav [Rameshwar Yadav v. State of Bihar, (2018) 4 SCC 608 : (2018) 2 SCC (Cri) 585] , this Court had the occasion to consider the scope and ambit of the application under Section 205 CrPC. In Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim &*

Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254] , this Court has observed that if a court is satisfied that in the interest of justice the personal attendance of an accused before it need not be insisted on, then the court has the power to dispense with the attendance of the accused. It is further observed by this Court in the aforesaid decision that if a court feels that insisting on the personal attendance of an accused in a peculiar case would be too harsh on account of a variety of reasons, the court can grant relief to such an accused in the matter of facing the prosecution proceedings. It is observed and held by this Court in the aforesaid decision that the normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused, such evidence can be taken but then his counsel must be present in the court, provided he has been granted exemption from attending the court."

16. In the said case the Hon'ble Supreme Court has considered the case of ***"Bhaskar Industries Ltd. Vs. Bhiwani Denim & Apparels Ltd. & Ors. (2001) 7 SCC 401***.

It is well settled law that for the very few provisions Special Judge is deemed to be a Magistrate and powers of Magistrate has been vested to the Special Judge time to time by the Hon'ble Apex Court for dealing and trial of the cases. Reference may be made to the ***State of T.N. v. V. Krishnaswami Naidu, (1979) 4 SCC 5 : 1979 SCC (Cri) 887 at page 7.***

"5. *It may be noted that the Special Judge is not a Sessions Judge, Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure though no person can be appointed as a Special Judge unless he is or has been either a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge. The Special Judge is empowered to take cognizance of the offences without the accused being committed to him for trial. The jurisdiction to try the offence by a Sessions Judge is only after committal to him. Further the Sessions Judge does not follow the procedure for the trial of warrant cases by Magistrates. The Special Judge is deemed to be a Court of Session only for certain purposes as mentioned in Section 8(3) of the Act while the first part of sub-section 3 provides that except as provided in sub-sections (1) and (2) of Section 8 the provisions of the Code of Criminal Procedure, 1898 shall, so far as they are not inconsistent with this Act, apply to the proceedings before the Special Judge. The sub-section further provides that:-*

"for the purpose of the said provisions, the Court of the Special Judge shall be deemed to be a court of Session trying cases without a jury or without the aid of assessors and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor".

The deemed provision has to be confined for the purposes mentioned in the sub-section. Section 8(2) enables the Special Judge to tender a pardon to a person with a view to obtaining evidence supposed to have been concerned with the commission of an offence and the pardon so tendered was for the purposes of Section 339 and 339(a) of the Code of Criminal Procedure, 1898. This sub-section was enacted because Special Judge not being a court to which a commitment has been made cannot tender pardon under the provisions of Section 338 and so this section is introduced to enable the Special Judge to tender a pardon. Sub-section 3(a) has made the provisions of Sections 350 and 549 applicable to proceedings before a Special Judge and for the purposes of the said provisions a Special Judge shall be deemed to be a Magistrate. Section 350 of the Code of Criminal Procedure enables a succeeding Special Judge to act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by himself. Section 549 empowers a Magistrate when any person is brought before him charged

with an offence for which he is liable to be tried by a court to which this Code applies or by a Court Martial, the Magistrate shall deliver him to the Commanding Officer of the Regiment for the purpose of being tried by the Court Martial. This provision also is made specifically applicable to the Special Judge. Section 8(A) empowers the Special Judge to try certain offences in a summary way and the provisions of Sections 262 to 265 of the Criminal Procedure Code is made applicable so far as they may apply."

17. The petition under section 205 of Cr.P.C. filed before the learned court, photocopy of the same is annexed with the main petition vide Annexure-4, page 99 wherein para 6, 7, 8 and 9 it has been stated as under:-

"6. That as your Petitioner is unable to attend the hearing due to the abovementioned reasons, the Petitioner seeks the kind indulgence of this Hon'ble Court to dispense with his personal attendance and permit him to be represented by his duly authorized pleader / advocate. The petitioner is filing this application duly represented through his advocates namely, Sanjay Kumar Vidrohi, Navin Kumar, Ranjeet Kushwaha and
Ritesh Kumar Gupta and vakalatnama has been executed in their favour, and they have also agreed to appear on behalf of the petitioner and represent the petitioner accordingly.
7. That the petitioner most humbly states that he shall not be prejudiced if the prayer is allowed and shall not raise any objection if the proceedings proceed in his absence but in presence of their representing advocates and also shall not challenge their identification at any stage of the proceeding in any manner.
8. That the petitioner humbly states that the present case is purely based on evidences which are documentary in nature, and it is fit and proper case, where Your Honour may kindly allow the petitioner to appear through their representing Advocates and exempt his personal appearance.
9. That the petitioner also undertakes to mark his personal appearance before this learned court when such presence shall be expedient in the interest of justice."

18. Looking into those paragraphs, it appears that the guidelines laid down by the Hon'ble Supreme Court in the case of ***Puneet Dalmia(supra) and Bhaskar Industries Ltd*** has been fulfilled. It has been stated in the said petition that he will not hide his identity for disputing the same and will not challenge the proceeding on the ground that trial has held in absence of witness who has deposed in his absence. Further on the record even in the argument of learned A.S.G.I. there is nothing to suggest that due to the said petition at any point of time investigation has been delayed. Section 205 of Cr.P.C. clearly speaks of that whenever a Magistrate issues a summons he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader. As per sub-section 2 of section 205 of Cr.P.C., the learned Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the

accused, and, if necessary, enforce such attendance in the manner hereinafter provided. Thus the learned Magistrate has a discretion to dispense with the personal attendance of the accused and permit to appear by the pleader if sees no express reason to do so applicable to the extent that reason should be sufficient reason requirement of law is that the Magistrate sees the reason he may dispense with the personal attendance of the accused and at the same time he is having the power to enforce the accused to appear before the Court and measures prescribed in absence of complying the order the measures prescribed in the Cr.P.C. he can invoke.

19. There is no doubt that section 205 of Cr.P.C power is a discretionary power of the learned court however in the interest of justice and to avoid the unnecessary harassment upon the accused the learned court is further required to consider the said application in view of the several judgments which has been considered by this Court hereinabove.

20. The Court is conscious of the fact that as normal rule the evidence shall be taken in presence of the accused however in absence of accused such evidence can be taken but his counsel must be present in the court provided that he has been granted exemption from attending the Court on any special circumstances. The administration of criminal justice should not be allowed to hamper due to the act of any of the accused. There must be progress in the trial. The purpose of attendance of the accused is not for attendance only but the purpose is to progress of the trial and if in absence of the accused the trial can proceed and progress takes place the Court is required to consider the magnitude of suffering which a particular accused may face.

21. The Court has minutely considered the argument advanced by Mr. Anil Kumar, learned A.S.G.I. to the effect that so far section 205 of Cr.P.C is not applicable for a proceeding conducted by a Special Court under the Prevention of Corruption Act. Section 9 of the Cr.P.C. speaks of learned Sessions Judge. Section 11 of the Cr.P.C. speaks of appointing of the Judicial Magistrate. Section 3 of the Prevention of Corruption Act speaks of power of appointment of Special Judges by the Central Government or the State Government. Section 4 of Prevention of Corruption Act

speaks of cases triable by the learned Special Judge. Section 5 of Prevention of Corruption Act speaks of procedure and power of Special Judge.

22. Section 22 of the P.C. Act speaks of that Cr.P.C. will apply subject to certain modification. Section 22 of the Prevention of Corruption Act is quoted hereinbeow:-

> *"22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications.-The provisions of the Code of Criminal Procedure, 1973(2 of 1974), shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,-*
> *(a)In sub-section (1) of section 243, for the words " The accused shall then be called upon", the words " The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted;*
> *(b)in sub-section (2) of section 309, after the third proviso, the following proviso had been inserted, namely:-*
> *"Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 had been made by the party to the proceeding."*
> *(c)after sub-section (2) of section 317, the following sub-section had been inserted, namely:-*
> *"(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with enquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.";*
> *(d) in sub-section (1) of section 397, before the Explanation, the following proviso had been inserted, namely:-*
> *"Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings,-*
> *(a)without giving the other party an opportunity of showing cause why the record should not be called for; or*
> *(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies:-*

23. Looking into the provision made under section 22 of the P.C. Act it appears that provision of Code of Criminal Procedure will apply to any proceeding in relating to offence punishable under that Act. In sub-Sections of the said section how the other sections will apply, has been disclosed.

24. Further, Section 4 of Cr.P.C. speaks of trial under the I.P.C. and other laws and section 5 of the Cr.P.C. is a saving section. All the cases will be tried in view of Cr.P.C. except if it is barred by any statute. Further sub-Section 5 of the Prevention of Corruption Act speaks of procedure followed by the Special Judge for the trial of warrant cases by the Magistrate. The trial before the learned Magistrate commence in view of Chapter 16 of the Act by way of supplying police paper under

section 207 of the Cr.P.C. and the trial under the warrant cases starts under Chapter 19 of the Cr.P.C. Thus, for the warrant cases also section 207 Cr.P.C. is applicable. In view of that it cannot be said that section 205 of Cr.P.C. cannot be considered by the Special Judge who is conducting the trial under the Special Act and view of this Court is further fortified in view of judgment of the Hon'ble Supreme Court in the case of ***Puneet Dalmia(supra)*** wherein the case was also arising out under the Prevention of Corruption Act and the Hon'ble Supreme Court has been pleased to allow the petition under section 205 of Cr.P.C.

25. The Investigating Officer consciously did not arrest the petitioner. The petitioner participated in the investigation. The C.B.I. also did not allege that the petitioner neither participated nor cooperated in the investigation. The learned Special Court after taking cognizance in present case ordered for summoning to the petitioner. The Investigating Officer even after filing of chargesheet did not apply for custody of the petitioner. Some of the co-accused have been arrested by the C.B.I. The petitioner has heavily relied paragraph 89 of the ***Satender Kumar Antil (supra) case*** with regard to section 205 of Cr.P.C. In view of the judgment of the Hon'ble Supreme Court in the case of ***Satender Kumar Antil (supra)*** it is not mandate of section 170 of the Code that if the accused is taken into custody or arrested during investigation, can be arrested or taken into custody after appearance in the Court post summoning order particularly when neither the investigating agency/prosecution agency sought arrest of the petitioner. The Hon'ble Supreme Court in ***Aman Preet Singh (supra)*** has categorically observed that arrest of any person is not mandatory in each and every case but before curtailing the liberty of an accused person the relevant facts and circumstances should be visualized.

26. In the case in hand, prima facie there was no requirement to take the petitioner into custody when he suo motu appeared before the learned court after receiving summon and filed the said petition under section 205 of Cr.P.C.

27. The petitioner being a co-conspirator and the Special Judge having jurisdiction to try the co-accused for the offence under Section 120B of I.P.C, the jurisdiction of the Special Judge to try the petitioner is not in doubt. It would be

rather incongruous that on a charge of conspiracy some of the conspirators may be tried by the Special Judge while others must be tried by the Courts under the Code of Criminal Procedure. Reference may be made to the ***"Union of India V. MAJ I.C. Lala ETC." (1973) 2 SCC 72*** wherein para 6 the Hon'ble Supreme Court has held as under:-

> *"**6.** Under Schedule II of the Code of Criminal Procedure offences under Sections 161 to 165 of the Penal Code, 1860 are shown as cognizable offences. At the end of that Schedule offences punishable with death, imprisonment for life or imprisonment for 7 years and upwards are also shown as cognizable offences. Under Section 5(2) of the Prevention of Corruption Act the sentence may extend to seven years. Therefore, an offence under Section 5 of the Prevention of Corruption Act is according to the provision in Schedule II to the Code of Criminal Procedure a cognizable offence. Therefore, the mere fact that under the Prevention of Corruption Act certain restrictions are placed as to the officers who are competent to investigate into offences mentioned in Section 5-A would not make those offences anytheless cognizable offences. The words "notwithstanding anything contained in the Code of Criminal Procedure" found at the beginning of Section 5-A(1) merely carve out a limited exemption from the provisions of the Code of Criminal Procedure insofar as they limit the class of persons who are competent to investigate into offences mentioned in the section and to arrest without a warrant. It does not mean that the whole of the Code of Criminal Procedure, including Schedule II thereof, is made inapplicable. Under Section 5 of the Code of Criminal Procedure all offences under the Penal Code, 1860 shall be investigated, inquired into, tried, and otherwise dealt with, according to the provisions therein contained. Also, all offences under any other law (which would include the Prevention of Corruption Act) shall be investigated, inquired into, tried, and otherwise dealt with, according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Section 5-A of the Prevention of Corruption Act should be related to this provision in Section 5(2) of the Code of Criminal Procedure, which limits the application of the provisions of that Code to be subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The only change which Section 5-A of the Prevention of Corruption Act makes is with regard to officers competent to investigate and arrest without warrant; in all other respects the Code of Criminal Procedure applies and, therefore, there is no doubt that all offences mentioned in Section 5-A of the Prevention of Corruption Act are cognizable offences."*

28. Applying the principles laid down by Supreme Court the petitioner could be tried along with the co-accused by the Special Judge in the same trial even for the offences not specified under Section 3 of the P.C. Act, but forming a part of the same transaction which led to commission of an offence under the Act, for which the public servants concerned are charged in addition to the offence of conspiracy under I.P.C. Moreover, only argument advanced by the CBI that the 205 Cr.P.C. power is with the magistrate and Special Court is not having that power.

29. Section 22 of the Act provides that the provisions of the Cr.P.C. shall in

their application to any proceeding in relation to an offence punishable under the Act, have effect subject to certain modifications specified therein. The modifications of the provisions of the Cr.P.C. in their application to offences punishable under the Act do not modify the provisions of Chapter XVII of the Cr.P.C. It is therefore apparent that the provisions of the Cr.P.C. do apply to trials for offence under the Act subject to certain modification as provided in Section 22 of the Act unless the application of any provision of the Code is excluded either expressly or by necessary implication. Reference may be made to the ***"Vivek Gupta Vs. Central Bureau of Investigation & Another " (2003) 8 SCC 628 at pages 631 to 632*** wherein para 6, 9, 10, 12 and 13 the Hon'ble Supreme Court has held as under:-

> ***"6.*** *Section 22 of the Act provides that the provisions of the Code of Criminal Procedure, 1973 shall, in their application to any proceeding in relation to an offence punishable under the Act, have effect subject to certain modifications specified therein. The modifications of the provisions of the Code of Criminal Procedure in their application to offences punishable under the Act do not modify the provisions of Chapter XVII of the Code of Criminal Procedure with which we are concerned in the instant appeal. It is, therefore, apparent that the provisions of the Code of Criminal Procedure do apply to trials for offences under the Act subject to certain modifications as provided in Section 22 of the Act unless the application of any provision of the Code is excluded either expressly or by necessary implication.*
>
> ***9.*** *A mere perusal of Section 4 of the Act clearly mandates that as specified in Section 3, offences punishable under the Act or any conspiracy, attempt or abetment to commit an offence under the Act shall be tried by a Special Judge appointed in accordance with Section 3 of the Act. Sub-section (3) of Section 4 also lays down clearly that while trying any case for an offence specified in Section 3 of the Act, a Special Judge may also try any offence other than offences specified in Section 3 with which the accused may under the Code of Criminal Procedure, 1973 be charged at the same trial. It therefore follows that a Special Judge trying a case relating to an offence specified in Section 3 of the Act may also try any offence under any other law for which, under the provisions of the Code of Criminal Procedure, the accused may be charged at the same trial. Thus in cases within the contemplation of Section 4(3) of the Act, the Special Judge is not precluded from trying an offence other than an offence specified in Section 3 of the Act.*
>
> ***10.*** *We have earlier reproduced the provisions of Section 220 of the Code. The aforesaid section will clearly apply to the case of the co-accused who undoubtedly must be tried by the Special Judge for the offence under Section 120-B read with Section 420 IPC, apart from the offence under the provisions of the Act. This is so because in the facts of this case there is no doubt that the offence under the Act and the offence under IPC of which they have been charged were committed in the course of the same transaction. Even Mr Sanyal, learned Senior Advocate appearing for the appellant did not dispute this position. His submission is that since the co-accused have been charged of offences under the Act, they can be tried by the Special Judge for other offences as well if such other offences have been committed in the course of the same transaction. He submitted that "accused" in sub-section (3) of Section 4 refers to an accused who is charged of offences specified in Section 3 of the Act. Therefore, he contends that since the appellant is not charged of any offence specified in Section 3 of the Act, his case will not be covered by sub-section (3) of Section 4.*
>
> ***12.*** *We have given to the rival submissions our deep consideration and we are of the view that the contention of the respondent must be upheld. It is worth noticing that sub-section (3) of Section 4 of the Act provides that a Special*

Judge may "also try any offence" other than an offence specified in Section 3 with which the accused may under the Code of Criminal Procedure be charged at the same trial. We have observed earlier that the provisions of the Code of Criminal Procedure apply to trials under the Act subject to certain modifications as contained in Section 22 of the Act and their exclusion either express or by necessary implication.

13. *Section 223 of the Code of Criminal Procedure has not been excluded either expressly or by necessary implication nor has the same been modified in its application to trials under the Act. The said provision therefore is applicable to the trial of an offence punishable under the Act. The various provisions of the Act which we have quoted earlier make it abundantly clear that under the provisions of the Act a Special Judge is not precluded altogether from trying any other offence, other than offences specified in Section 3 thereof. A person charged of an offence under the Act may in view of sub-section (3) of Section 4 be charged at the same trial of any offence under any other law with which he may, under the Code of Criminal Procedure, be charged at the same trial. Thus a public servant who is charged of an offence under the provisions of the Act may be charged by the Special Judge at the same trial of any offence under IPC if the same is committed in a manner contemplated by Section 220 of the Code.*

30. The only modification indicated in Section 22 of the Act are with regard to sub-section of Section 243, sub-section (2) of Section 309, 397, sub-section (2) of Section 317, sub-section (1) of Section 397 Cr.P.C. apart from these sections so modifications are indicated. Thus, Cr.P.C. will apply and 205 Cr.P.C. power is not excluded from the Special Judge under the P.C. Act.

31. In that view of the matter, objection raised by the learned A.S.G.I. is not accepted and accordingly the said objection is rejected.

32. The Court finds that the petitioner has been able to make out a case of personal dispense under section 205 of Cr.P.C. Accordingly, the order dated 11.04.2022 passed in Miscellaneous Application No. 1578 of 2021 by learned AJC, XVIII-cum-Special Judge, CBI, Ranchi is set aside and consequently, application submitted by the petitioner to dispense with the personal appearance before the learned court on all the dates and adjournment and permitting his counsel to appear on his behalf is hereby allowed on the following conditions:-

(i) The petitioner shall give an undertaking to the learned trial court that he will not dispute his identity in his case and that the name of the learned Advocate representing him before the learned court will be disclosed before the learned court and he will be permitted to represent the petitioner and would appear before the learned trial court on his behalf on each and every date of hearing and that he shall not object recording of evidence in his absence and no adjournment shall be asked on behalf of the petitioner or his Advocate who will represent the petitioner;

(ii) The petitioner shall appear before the learned court for the purpose of framing of charge and also on the hearing dates whenever the learned trial court insists for his appearance;

(iii) There will not be failure on the part of the Advocate of the petitioner who will represent the petitioner either to appear before the learned court on each adjournment or any adjournment sought on behalf of the petitioner and if the learned trial court comes to the conclusion that the petitioner or his advocate is trying to delay the trial in that case, it would be upon the learned court to exercise its power under sub section 2 of section 205 Cr.P.C and direct the appearance of the petitioner on each and every date of adjournment; and

(iv) The petitioner is directed to file a fresh petition on affidavit in light of the above directions before the learned trial court.

33. This petition is allowed and disposed of in above terms. Pending I.A, if any, stands disposed of. Interim order is vacated.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/A.F.R.