

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Criminal Miscellaneous Jurisdiction)
A.B.A. No. 6637 of 2018

Basir Ansari @ Md. Basir & Others Petitioners
Versus
The State of Jharkhand & Others Opp. Parties

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

For the Petitioners : Mr. Sanjay Prasad, Advocate.
For the State : Mr. Sachin Kumar, A.A.G.-II
Mr. Saket Kumar, A.P.P.
For the M.C.I. : Mr. Ajit Kumar, Sr. Advocate.
M/s Aprajita Bhardawaj, Advocate.
Amicus Curiae : Mr. A.K. Kashyap, Sr. Advocate.

20/Dated: 13/04/2021

I.A. No. 2201/2021, I.A. No. 2202/2021 & I.A. No. 2203/2021

Heard, learned counsel, Mr. Sachin Kumar, Additional Advocate General-II on behalf of State.

Three separate interlocutory applications have been filed for exemption from personal appearance of the Chief Secretary, Home Secretary and Health Secretary, Government of Jharkhand in compliance of order dated 09.04.2021.

First Interlocutory Application i.e. I.A. No. 2201/2021 has been preferred by the Chief Secretary, State of Jharkhand with a prayer to dispense with the personal appearance on 13.04.2021 and also for extension of four weeks' time to file affidavit as per the direction of the Hon'ble Court.

In para-6 of the aforesaid interlocutory application, it is stated that :

“6. That so far as filing of the fresh affidavit is concerned, four weeks further time is being prayed for filing the required affidavit. At present, due to sudden surge in Covid-19 cases in the State of Jharkhand, the Chief Secretary is himself monitoring the situation and it will be in the interest of justice to grant four weeks time to file the required affidavit.”

However, in this affidavit, there is no explanation on that particular day why the Chief Secretary could not appear before the Court even on information given at 10:40 a.m. on 09.04.2021 by Mr. Saket Kumar, Additional Public Prosecutor to assist this Court from his working place.

However, this Court is inclined to accept the prayer for four weeks' time from today and liberty is given to the Chief Secretary,

Government of Jharkhand to assist this Court on 13.05.2021 before the Court is closed for Summer Vacation, however, if the situation normalized in the State of Jharkhand because of Covid-19.

Accordingly, I.A. No. 2201/2021 stands disposed of.

Second Interlocutory Application i.e. I.A. No. 2202/2021 has been filed on behalf of the Home Secretary, State of Jharkhand with a prayer to dispense with the personal appearance on 13.04.2021 and also for extension of time to file affidavit as per the direction of the Hon'ble Court.

In para-4 of the aforesaid interlocutory application, it has been stated that :-

“4. That it is humbly submitted that on 09.04.2021, the Home Secretary was preoccupied and was busy in various work in view of the situation which has crept up due to surge in COVID-19 cases. The non-appearance was not intentional and was due to the reasons beyond the control of the Home Secretary.”

Though, no specific reason has been given by the Home Secretary that what was the reason for not connecting himself virtually from his work place at 12:00 noon of 09.04.2021 even though information was given to him by Mr. Saket Kumar, learned Additional Public Prosecutor at 10:40 a.m. but considering the seriousness of Covid-19, this Court grants four weeks' time as prayed by him to file affidavit and to assist this Court from his work place by virtual mode on 13.05.2021, if the situation of Covid-19 is normalized.

Accordingly, I.A. No. 2202/2021 stands disposed of.

Third Interlocutory Application i.e. i.e. I.A. No. 2203/2021 has been filed by the Secretary, Department of Health, State of Jharkhand with a prayer to dispense with the personal appearance on 13.04.2021 and also for extension of time to file affidavit as per the direction of Hon'ble Court.

In para-4 & 6 of the aforesaid affidavit, it has been stated that :-

“4. That it is humbly submitted that on 09.04.2021, the Health Secretary was present before the Hon'ble Division Bench No. 1 in connection with W.P. (PIL) No. 1301/2020 and was further required to join at 12:30 PM with some details. The Health Secretary was busy and could not get the opportunity to join. The non-appearance was not intentional and but due to reasons beyond the control of the Secretary.

6. That a request is being made on behalf of the Secretary, Department of Health, Medical Education and Family Welfare, Govt.

of Jharkhand to dispense with the personal appearance for the present. The Health Secretary and the other officers of the State are badly engaged in dealing with the situation due to surge of Covid-19 in the State of Jharkhand. The Hon'ble Division Bench is monitoring the matter on day to day basis and the PIL is again fixed for 13.04.2021.”

Considering such prayer, though no reason has been assigned that why State Counsel could not disclose this fact to the Court on that day, even then considering the surge of Covid-19, the personal appearance of Secretary, Department of Health, Government of Jharkhand is dispensed with till the situation in the State of Jharkhand is normalized, if possible till the last working date of Court before the Summer Vacation i.e. 13.05.2021 to connect through virtual mode from his work place.

Accordingly, I.A. No. 2203/2021 stands disposed of.

If the situation of Covid – 19 is not improved, they may further take time to assist this Court because their assistance is only required for betterment of criminal justice system in the State of Jharkhand as repeated case of such nature including the case of Basir Ansari Vs. State of Jharkhand and Parmeshwar Sao Vs. State of Jharkhand are coming before this Court.

Accordingly, personal appearance of these three officials i.e. Chief Secretary, Home Secretary and Health Secretary, State of Jharkhand are hereby dispensed with till 13.05.2021 or if the situation is not normalized in the State of Jharkhand, they may take further extension.

This order shall be considered to be part of order dated 09.04.2021 in letter and spirit.

Place this case when the three Government Officers i.e. the Chief Secretary, Home Secretary and Health Secretary, Government of Jharkhand are inclined to assist this Court in the matter of criminal justice system probably on 13.05.2021 by filing their separate affidavits in the matter as discussed above, if Covid-19 situation is under control otherwise, put up this case after filing their affidavit.

Let copy of this order be communicated to the concerned Chief Secretary, Home Secretary and Health Secretary, Government of Jharkhand by tomorrow.

(Kailash Prasad Deo, J.)