2025 INSC 172

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO(S). OF 2025
(Diary No. 45970 of 2023)

JASMINBHAI BHARATBHAI KOTHARI ...PETITIONER(S)

VERSUS

STATE OF GUJARAT ...RESPONDENT(S)

O R D E R

1. This present petition is directed against the order dated 19th October, 2023 passed by the High Court of Gujarat[1], whereby the Division Bench had refused to extend the period of temporary bail granted to the petitioner in Criminal Appeal No. 417 of 2009, preferred by the petitioner herein, which is pending adjudication before the High Court. In the said criminal appeal, the petitioner

[1] For short, the 'High Court.'

has assailed the conviction and sentence awarded by the learned Additional Sessions Judge, District Court Bhavnagar *vide* judgment dated 3rd November, 2018, for the offences punishable under Section 302 of the Indian Penal Code, 1860 read with Section 34 and Section 25 (1) (B) (A) of Arms Act, 1959.

2. We have noticed an apparent anomaly in the listing of this petition which we propose to clarify and address.

3. While preferring the present special leave petition, the petitioner also filed an Interlocutory Application[2] seeking exemption from surrendering. The said application was registered by the Registry and stands rejected by the Hon'ble Judge-in-Chamber *vide* order dated 8th December 2023.

4. We are of the *prima facie* opinion that the above application could not have been entertained in the very first instance. Our conclusion is based on plain reading and interpretation of Order XXII Rule 5 of the Supreme Court Rules, 2013[3] which is reproduced hereinbelow: -

> **"Where the appellant has been sentenced to a term of imprisonment, the petition of appeal shall state whether the appellant has surrendered and if he has surrendered then the appellant shall, by way of proof of such surrender, file the certified copy of the order of the Court in which he has surrendered or a certificate of the competent officer of**

[2] IA No. 248997 of 2023.
[3] For short, 'SC Rules 2013.'

> **the Jail in which he is undergoing the sentence.** A mere attestation of the signatures on the Vakalatnama from the Jail authorities shall not be considered as sufficient proof of surrender. **Where the appellant has not surrendered to the sentence, the petition of appeal shall not be accepted by the Registry unless it is accompanied by an application for seeking exemption from surrendering.** Where the petition of appeal is accompanied by an application for exemption from surrendering, that application alone shall be posted for hearing orders before the Court in the first instance."
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> (emphasis supplied)

5. On perusal of the aforesaid Rule, it is clear that an Interlocutory Application for exemption from surrendering is admissible only where the petitioner in the special leave petition has been '*sentenced to a term of imprisonment*' and not in any other situation.

6. We have observed that the Registry of this Court has been entertaining applications for exemption from surrendering in various other categories of cases, such as the rejection of anticipatory bail, rejection of a prayer for an extension of interim bail, etc.

7. In the case of ***Mahavir Arya v. State Government NCT of Delhi and Anr***[4]**,** Hon'ble Shri Justice Pamidighantam Sri Narasimha, sitting in Chambers, interpreted Order XXII Rule 5 of the SC Rules, 2013 and held that the said Order applies only to

[4] Special Leave Petition (Criminal) [Diary No. 8160 of 2021].

cases where the petitioner is '*sentenced to a term of imprisonment*' and it cannot be confused with simple orders of cancellation of bail.

8. In ***Kapur Singh v. State of Haryana***[5], this Court in a special leave petition, challenging the order of cancellation of the bail, dismissed the Interlocutory Application seeking exemption from surrendering on a similar *rationale*. The Court noted that:

> **"6.** In my considered view, the question of the petitioner surrendering before the trial court, as a precondition for entertaining the above SLP, does not arise. **Order XXII Rule 5 of the Supreme Court Rules, 2013, makes it mandatory for a person to surrender or seek exemption from surrendering only when he has been sentenced to a term of imprisonment. The petitioner has not been sentenced to any term of imprisonment, by the orders impugned in the SLP.** The orders out of which the above SLP arises, are orders passed for failure to comply with the directions issued under Section 143-A of the NI Act.
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> **9.** When Section 143-A(5) of the NI Act read with Section 421(1)CrPC does not prescribe a term of imprisonment and **when the orders impugned in the SLP do not challenge any penalty of imprisonment for a particular term, the question of the petitioner surrendering or seeking exemption from surrendering does not arise.** In other words, in cases of this nature, the **Registry cannot insist upon either a surrender certificate or an application for exemption from surrendering under Order XXII Rule 5 of the Rules."**
>
> (emphasis supplied)

9. A similar view was taken by this Court in ***Mayuram Subramanian Srinivasan v. CBI***[6]; ***Vivek Rai and Another v.***

[5] (2021) 18 SCC 579.
[6] (2006) 5 SCC 752.

High Court of Jharkhand[7]; ***Dilip Majumder v. Nikunja Das & Anr.***[8]; and ***Sanjit Saha and Another. v. State of West Bengal***.[9]

10. In view of the clear language of Order XXII Rule 5 of the SC Rules 2013 and successive orders passed by this Court as mentioned above, we are firmly of the opinion that an application seeking exemption from surrendering cannot be entertained or listed before the Hon'ble Judge-in-Chambers in any special leave petition, except where the petitioner has been sentenced to a term of imprisonment. This order shall be placed before Hon'ble the Chief Justice of India for seeking formal instructions to the concerned filing, scrutiny and numbering Sections concerning matters in which Order XXII Rule 5 will apply.

11. Returning to the facts of the present case, since the petitioner has already surrendered upon the rejection of the Interlocutory Application(*supra*), the present special leave petition challenging the High Court's refusal to extend the temporary bail has become infructuous.

12. Accordingly, the special leave petition is disposed of as infructuous.

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[7] (2015) 12 SCC 86.
[8] Special Leave Petition (Criminal) [Diary No.6517 of 2020].
[9] 2023 SCC OnLine SC 1693.

13. Pending application(s), if any, shall stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
JANUARY 30, 2025.