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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P. (CRL.) 804/2020

HANSRAJ & ORSPetitioners

Through: Mr. Pankaj Yadav, Advocate

versus

STATE OF DELHI & ORSRespondents

Through: Mr. Rahul Mehra, Standing
Counsel (Crl.) and Mr. Chaitanya
Gosain, Advocate for the State

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

ORDER

14.05.2020

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1. A young boy of 23 years of age belonging to a very poor family and in judicial custody for more than ten months having been arrested in FIR No.189/2019 under Sections 364A/365/506/323/34 of the IPC, registered at P.S. Dwarka North, New Delhi applied for bail through the online facility provided at the Dwarka Courts. However, the online filing was rejected by the Facilitation Centre of Dwarka Courts on two grounds, namely, that the *Vakalatnama* was not duly signed and attested either by the accused himself or his family members, and secondly, that the application was neither bookmarked nor in searchable format.

2. It is the grievance of the petitioner, (though cause title mentions Hansraj & others, only Hansraj is the petitioner, as per the memo of parties) that despite explaining the difficulty in getting an attested/signed

Vakalatnama, as the counsel resided in Gurugram and the family of the applicant resided in Ghaziabad and the borders were sealed, the online filing was rejected. Accordingly, the present petition has been filed with the following prayers: -

- I. set modify/set aside the Circular No.7230-7284/DJ/SW/DWK/2020 dated: 02.05.2020 issued by the Ld. District & Sessions Judge (S-W), Dwarka Courts, Delhi (Annexure P-1)*
- II. Set modify/set aside the Impugned Email (Annexure P-3) raising objections to petitioner's bail application and the necessity of Vakalatnama being signed by accused and getting same duly attested by Jail Authorities amid this COVID-19 pandemic may kindly be exempted.*
- III. Pass orders, directing the concerned authority of Dwarka District Courts, New Delhi be directed to list and hear the bail application of the petitioner.*
- IV. Pass any other order/orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and keeping in mind the hardships litigants have to face in the pandemic of COVID-19."*

3. Sh. Pankaj Yadav, learned counsel for the petitioner also pointed out that the Dwarka Courts insisted on a Certificate, which is Annexure-B [Page 24 of the paper-book], which reads as follows: -

"UNDERTAKING BY PETITIONER

(To be filed by the petitioner/applicant/plaintiff(s)

along with the petition/application/plaint filed through electronic mode – email)

CERTIFICATE

I, _____, the petitioner/applicant/plaintiff, do hereby certify that the documents annexed to the petition/application/plaint are true copies of their respective originals. The documents so annexed are self-attested and if the same are found to be false or fabricated, I shall make myself liable for civil and criminal legal action. I undertake to submit the duly signed and attested petition/application/plaint, in original in the Court and to make up the deficiency, if any, in the court fee.

Signed

(Name in Block Letters)

(Address with email and mobile number)''

4. According to Sh. Yadav, learned counsel, this Certificate has also to be signed by the petitioner/applicant/plaintiff, which is not possible for a person who is in judicial custody. It is submitted that once the counsel has filed the undertaking as prescribed at Annexure-A of the Circular issued by Office of District & Sessions, Dwarka Courts (S-W), Dwarka Courts: New Delhi dated 02.05.2020 and forming part of Annexure P-1 to this petition, that he would file the duly signed, verified and attested petition/application/plaint in original after the withdrawal of the lockdown, there was no occasion for insisting on another undertaking by the petitioner.

5. Sh. Rahul Mehra, learned Standing Counsel appearing on behalf of respondent/GNCTD pointed out that the guidelines issued by the High Court were intended to facilitate litigants and lawyers in these extraordinary times and it would be a rare advocate who would move petitions or applications without due authority, and submitted that the District Courts be directed to follow the practice of the High Court of Delhi even in respect of the filing of *Vakalatnamas*.

6. It was found appropriate by this Court to call for a report from the Registrar General of this Court as to the practice being adopted by all the District Courts in Delhi with regard to e-filing and the requirement for filing *Vakalatnama*. It is noticed that in the Central District and West District, where the accused is in jail, the *Vakalatnama* is to be signed by the spouse/parents/immediate family member of the accused. The North District and North West District have reported that no e-filing has been declined for want of/technical defect in *Vakalatnama* till date. The practice in East District, North-East District and Shahadara District is to obtain a scanned copy of the *Vakalatnama* of the concerned party or authority letter of the spouse or parents to avoid filing of bail application and urgent matters by an unauthorised person. The New Delhi District accepts bail applications even if the *Vakalatnama* is not annexed with an undertaking from the advocate that the *Vakalatnama* is either already on the record or will be filed after the lockdown is over. A similar practice is being adopted at the Rouse Avenue District Court where physically signed and attested *Vakalatnama* is not being insisted upon during e-filing, with an undertaking by the Counsel to the effect that he will submit

the physical copies of the Applications/documents, alongwith necessary fees and charges applicable, when the court resumes its normal functioning, before the court concerned. However, Advocates are filing undertaking that they have been appointed by the client. In South District, the scanned *Vakalatnama* signed by the party or *paikar* is being taken in every case alongwith an undertaking to the effect that physical copies of the original paper-book including *Vakalatnama* will be filed within 15 days when the Court resumes normal functioning. In South-East District, bail applications, which are signed by the representative/*paikar* in cases where the accused is not available, is being accepted with a certificate/affidavit of the representative with regard to authorization. In Dwarka District, as noticed above, either the *Vakalatnama* has to be attested or an authority/*Vakalatnama* must be signed by the *paikar* or the family member of the accused, who is in judicial custody.

7. It may also be noticed that in the Report of the Registrar General, the stand of the Dwarka District Courts has been quoted, which is reproduced hereinbelow: -

“In the exchange of e-mail communications between Mr. Pankaj Yadav and Facilitation Centre Dwarka on 6/5/20 at 3.13 pm, Mr Yadav has acknowledged that Jail Supdt Rohini told him telephonically that vakalatnama can be got attested.”

8. Sh. Pankaj Yadav, learned counsel for the petitioner has explained that the Jail Authorities had informed him that, if the *vakalatanama* is delivered at the gate of the Rohini Jail, the same could be returned after

due attestation, which, in the current circumstances, is impossible given the fact that the borders are sealed.

9. The record reveals that after the response was received from the Facilitation Centre of the Dwarka Courts, Sh. Pankaj Yadav had sent an email dated 06.05.2020, explaining that since the advocate resides in Gurugram and the family of the applicant resides in Ghaziabad and both the borders are sealed, it was difficult to get the *vakalatnama* attested from the Jail Authorities and that it should not be insisted upon as in any case, the counsel had filed an undertaking as required, which was to the effect that he undertakes to submit the duly signed application from the *paikar*, being the father of the accused/applicant, after the lockdown. An email has been also sent as an authority letter in favour of Sh. Pankaj Yadav by Sh. Pushpendra Kumar, who has given his Aadhaar Number and Phone Number also recording that he undertakes to sign all the requisite documents after the closure of the lockdown. Despite this, the bail application was not received.

10. This case presents peculiar facts which ought to have been handled by the Facilitation Centre, Dwarka Courts with greater sensitivity. The concern of the District Courts of preventing unauthorized filing of bail applications seems to be rather misplaced, for a bail application is moved for the benefit of a person who is in jail. At the worst, if the bail application is rejected, no court would bar the filing of a fresh bail application with proper justification and the concerned court would again dispose it of as per law. When the peculiar circumstances of this case were brought to the notice of the Facilitation Centre, Dwarka Courts, a

further undertaking could have been taken through the advocate that not only would the duly signed, verified and attested petition/application be filed in original, but a duly signed *vakalatanama* would also be filed within two weeks of the withdrawal of the lockdown.

11. As pointed out by the Registrar General in his Report, mandatory requirements have been eased even in the High Court, including with reference to *vakalatanama* , only to facilitate filing and quicker delivery of justice during this unprecedented time of pandemic and lockdown.

12. The Facilitation Centre, Dwarka Courts, through the District Judge, South-West, Dwarka Courts is therefore, directed to forthwith accept the bail application with an undertaking by the counsel to file the *vakalatanama* duly signed within two weeks of the withdrawal of the lockdown. The bail application be listed before the Duty Sessions Judge without further delay.

13. In order to avoid similar situations occurring in other Districts, this Court directs that in bail matters, there will be no insistence on filing of the signed/attested *vakalatanama*, signed and attested affidavits or applications where the applicant is in jail and/or of the family members of such an applicant, reside outside Delhi.

14. Similarly, the Certificate (Annexure-B) of the Circular dated 02.05.2020 of the Office of the District & Session Judge (S-W), Dwarka Courts: New Delhi, as reproduced hereinabove, will also be dispensed with when the petitioner/applicant/plaintiff resides outside Delhi. An email, as sent in the present case by the father affirming the appointment

of counsel and an undertaking to sign the *vakalatanama* and other original documents within two weeks of the lifting of the lockdown should suffice in such cases. Aadhaar number and phone/mobile number should also be recorded in such email/authority letter. Such emails should be accepted without insistence on signatures, as it may not be possible for everyone to append their digital signatures or send the scanned copy.

15. Physically signed and attested *vakalatanama* of a person, who is in custody or not residing in Delhi will not be insisted upon by the Facilitation Centre in any of the District Courts in Delhi and nor will bail applications be not accepted only for this reason.

16. The Registrar General of this Court is requested to circulate these directions to the learned District Judges for immediate compliance.

17. With the above directions, this petition is disposed of.

18. Copy of this order be sent through electronic mode to the learned counsel for the petitioner as well as learned Standing Counsel for the respondent/GNCTD.

ASHA MENON, J

MAY 14, 2020

s/pkb/ak