

**HIGH COURT OF MADHYA PRADESH****Bench: Hon'ble Shri Justice Subodh Abhyankar****Date of Decision: 24th May 2024**

MISC. CRIMINAL CASE No. 19859 of 2024

**MOHAMMED SAEED      ...APPLICANT****Versus****1. THE STATE OF MADHYA PRADESH****2. PRITI                                      ...RESPONDENTS****Legislation:**

Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C)

Sections 420, 406, 34, 467, 468, 471, 477-A, 409 of the Indian Penal Code (IPC)

**Subject:** Criminal petition seeking to set aside the order rejecting the application for exemption from appearance due to attending a funeral, under Section 317 Cr.P.C.**Headnotes:**

Criminal Law – Exemption from Appearance – Petition under Section 482 Cr.P.C. against the rejection of an application under Section 317 Cr.P.C. for exemption from personal appearance – Petitioner unable to appear in court due to attending uncle's funeral – Trial court rejected exemption due to lack of immediate proof of death – High Court sets aside trial court's order, granting exemption – Recognizes procedural leniency for unforeseen personal events – Importance of balancing judicial process with personal exigencies emphasized. [Paras 1-8]

Nonappearance Justification – Evaluation – Held – The nonappearance justified by petitioner's presence at a funeral – Submission of necropolis receipt and affidavit suffices for immediate proof – Importance of procedural justice and consideration of humanitarian grounds reaffirmed. [Paras 3-4]

Decision – Setting Aside of Impugned Order – High Court sets aside the trial court's order rejecting the exemption application – Directs petitioner to continue regular appearances henceforth – Emphasizes balance between judicial rigor and personal circumstances. [Paras 6-8]

Referred Cases: None.

Representing Advocates:

For Petitioner: Shri Sunil Gupta

For Respondents: Ms. Harshlata Soni

### **ORDER**

1. This petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as “CRPC”) against the order dated 15.3.2024 (Annexure A-3); whereby, the petitioner’s application under Section 317 of the CRPC for exemption from appearance, has been rejected.
2. In brief facts of the case is that the petitioner is facing trial under Sections 420,406, 34,467,468, 471,477-A and 409 of IPC in S.T.No.3/2023 which is pending in the Court of Fourth Additional Sessions Judge, Indore. In the aforesaid case, the petitioner has already been granted bail by this Court on 13.1.2023, passed in MCRC.62199/2022 (Annexure A-9), and according to the petitioner he is regularly marking his presence in the trial Court as and when required. However on 15.3.2024, he had gone to attend the funeral of his uncle, and he could not mark his appearance in the trial Court. On that day, when the matter was fixed for evidence, a witness also appeared, however, counsel appearing for the petitioner sought time on the ground that the matter is to be dealt with by his senior and an application under Section 317 of the CRPC was also filed on behalf of the petitioner for his exemption from appearing before the Court. The application for exemption was rejected on the ground that along with the application, the petitioner has not filed the death certificate of his uncle in whose funeral he was going.
3. Counsel appearing for the petitioner has submitted that the death had taken place on 15.3.2024 itself, and thus, it was not possible for the petitioner to produce any proof of his uncle’s death, however, before this Court the petitioner has also filed a receipt of Rs.1600/- of the necropolis (WAKF Kabristan Banganga) in respect of the receipt in the name of Niyas Uddin Qureshi. It is submitted that no other certificate is available. However, an affidavit of the petitioner’s wife is also filed on record stating that her husband could not mark his presence on account of death of his uncle Niyas Uddin Qureshi.

4. Counsel for the petitioner has submitted that the nonappearance of the petitioner was only for one day, and for which an application under Section 317 of the CRPC was also filed, thus, the same ought to have been allowed by the trial Court.
5. Counsel for the respondent/State on the other hand has opposed the prayer.
6. Heard. Having considered the rival submissions and on perusal of the documents filed on record, this Court finds that since the petitioner was already appearing in the trial Court on earlier occasions, the trial Court could have granted the exemption. Accordingly, the impugned order dated 15.3.2024 (Annexure A-3) is hereby set aside, and the application filed under Section 317 of the CRPC is hereby allowed.
7. The petitioner is directed to appear before the trial Court and on such other dates as may be given by the trial Court henceforth.
8. The petition **stands allowed and disposed of.**

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