

**IN THE COURT OF THE PRINCIPAL SPECIAL JUDGE FOR CBI CASES:
HYDERABAD.**

Dated : Friday, the 1st day of November, 2019.

Present : **B.R.Madhusudhan Rao,**
Principal Special Judge for CBI Cases,
Hyderabad.

Crl.M.P.No. 1766 of 2019
in
C.C.No. 24 of 2013

Between :

Mr. Y.S.Jagan Mohan Reddy,
S/o. Late Y.S.Rajasekhara Reddy,
Aged about 46 years, R/o. Villa No.45,
Parc Ville, Tadepalli, Guntur,
Andhra Pradesh – 522 502.

... Petitioner/Accused No.1

And

Central Bureau of Investigation, Hyderabad.

... Respondent/Complainant

This petition coming before me on 18.10.2019 for hearing in the presence of Sri S.Niranjan Reddy – Senior Counsel and Sri G.Ashok Reddy – Counsel for the Petitioner/A-1 and of Sri K.Surender – Special Public Prosecutor for the Respondent/Complainant/CBI and after hearing the arguments and perusing the material on record and that the matter having been stood over for consideration till this day, this Court made the following:

ORDER

1. This petition is filed by petitioner/A-1 under Section 205 of Cr.P.C. requesting to permit him to appoint Mr. G.Ashok Reddy, Advocate to appear on his behalf as a Special Vakalat Holder before this Court, in the case.

2. The brief averments of the petition are as under :

(a) Petitioner is arraigned as A-1 in the case pursuant to registration of crime in RC.No.19(A)/2011, the respondent/CBI has filed 11 original charge sheets before this Court. Petitioner/A-1 has been enlarged on bail in C.C.No.8/2012 by this Court vide order dt.23.09.2013 subject to conditions and the petitioner/A-1 has acted in compliance thereof ever since.

(b) The expansive nature of several charge sheets and supplementary charge sheets, followed by Enforcement Directorate complaints (still continuing to be filed/reported) have led to a prolonged continuance of process before this Court which resulted the petitioner/A-1 approaching this Court seeking its indulgence for relaxation of certain terms of bail from time to time.

(c) Petitioner/A-1 has filed an application under Section 205 Cr.P.C. vide Crl.M.P.No.1753/2013 in the then prevalent and pleaded circumstances which was rejected on 04.02.2014. Similar relief in batch matters thereof were dismissed on 23.09.2016 recording that no grounds are made out at that juncture and the orders were confirmed by the Hon'ble High Court in CRLP.No.7446/2017 and batch dt.31.08.2017.

(d) Certain important developments necessitating the petitioner/A-1 to now approach this Court seeking permission to permit the petitioner/A-1 to appoint Sri G.Ashok Reddy, Advocate as a Special Vakalat Holder and permit his advocate to appear on behalf of the petitioner/A-1 under Section 205 Cr.P.C.

(e) Petitioner was a Member of Parliament representing Kadapa District at the time of considering bail petition on 23.09.2013 by this Court. Subsequently, General Elections for the State of Andhra Pradesh were held during April/May, 2014, in the said elections the petitioner/A-1's political party i.e., YSRCP secured 67 MLA seats and the petitioner/A-1 was elected as an MLA from Pulivendula Constituency and was also elected as a Leader of Opposition for the Andhra Pradesh State Legislative Assembly.

(f) In the General Elections held on 11.04.2019, the petitioner/A-1's political party (YSRCP) secured 151 MLA seats out of 175 Legislative Assembly seats in Andhra Pradesh and the petitioner/A-1 has now assumed the office as Chief Minister of Andhra Pradesh and striving his best in discharging public duty. The State of Andhra Pradesh has been reconstituted under the Andhra Pradesh

Reorganisation Act, 2014 amidst historic events, parliamentary disruptions. Contrary to the majority will of the people of the State of Andhra Pradesh, the sudden and abrupt reconstitution of the State has resulted in the new State of Andhra Pradesh being plunged into serious financial distress and economic deficit.

(g) The new Government with the petitioner/A-1 as Chief Minister has assumed the office on 30.05.2019 and is now confronted with the challenge of the development and administration of the State while dealing with multitudinous and onerous problems.

(h) The State of Andhra Pradesh is facing huge revenue deficit, an unbuilt capital city, undeveloped infrastructure, no previous governance addressed important issues and burdensome and onerous commitments and contracts contrary to public interest. The present Government is undertaking various efforts on a war scale to address the problems.

(i) Petitioner/A-1 after assuming the office as the Chief Minister has taken up to assess and ameliorate the situation, special and cabinet sub-committees have been constituted on various issues and requisite meetings of officials, ministers, committees are being conducted on regular basis.

(j) Petitioner/A-1 has been working relentlessly and tirelessly for addressing these issues and is engaged in various administration related efforts including conducting various meetings and reviews with the officials, distinct administration, governmental and departmental level meetings and issues even while attending to the important legislative and executive duties. Petitioner/A-1's continuous presence in the struggling State of Andhra Pradesh is imperative, necessary and is merited in larger public interest.

(k) Petitioner/A-1 was earlier staying and conducting his matters from Hyderabad as his house in Vijayawada was under construction. Petitioner/A-1 has now permanently relocated to Vijayawada and the official duties, responsibilities as

the Chief Minister require the petitioner/A-1 to be stationed in Andhra Pradesh at Amaravati. If the petitioner/A-1 is required to attend the hearing of the above matter on every day, he would need to travel from Vijayawada/Amaravati/Andhra Pradesh every Thursday and can only return back to Vijayawada/Amaravati/Andhra Pradesh only on Friday night effectively meaning that the petitioner/A-1 would be away from the State of Andhra Pradesh for nearly two days in a week/fortnight even if the matters were to be taken on the current periodic basis, the mandatory presence of the petitioner/A-1 would require a considerable excuse from official time which would seriously impact and derail the administration of the State of Andhra Pradesh.

(l) The current position and public duty undertaken by the petitioner/A-1 entails a protocol and security related details following the petitioner/A-1 wherever he travels, the security and protocol details are to be maintained at public expense and at the cost of already strained Andhra Pradesh State public exchequer, having regard to the provisions of Cr.P.C. the matters requiring to be conducted in the presence of the accused for the benefit of the accused and the petitioner/A-1 considers, rather deems that such private interest of the petitioner/A-1 must yield to the larger public interest and he does not wish to avail such personal rights under the provisions of Cr.P.C.

(m) Petitioner/A-1 is duty-bound and also morally and legally obliged to be present before this Court on any date when the process of the matter requires his presence. Petitioner/A-1 undertakes that he will not question or dispute his identity and further undertakes not to question the acts committed by his counsel Sri G.Ashok Reddy during the course of enquiry or trial before this Court. Petitioner/A-1 further undertakes that he will appear before this Court as and when directed and prayed to permit the petitioner/A-1 to appoint Sri G.Ashok Reddy,

Advocate to appear on his behalf as a Special Vakalat Holder before this Court in the above case, in the interest of justice.

3. (a) Respondent/CBI filed its counter and contended that CBI, Hyderabad Branch has registered a case vide R.C.No.19(A)/2011-CBI/HYD on the basis of common orders passed by the Hon'ble High Court of Andhra Pradesh, Hyderabad dt.10.08.2011 in W.P.Nos.794/2010 and 6604/2010 filed by Sri P.Shankar Rao, the then MLA, Secunderabad Cantonment and Sri Y.Yerramnaidu, Ex-MP and investigated into. Petitioner/A-1 was arrested on 27.05.2012 in the *quid pro quo* transaction. On completion of the investigation CBI, Hyderabad has filed 11 charge sheets.

(b) The conditions imposed by this Court while granting bail on 23.09.2013 are with a purpose to ensure an environment that the witnesses would freely come to the Court and depose the truth in keeping the basic tenets of the criminal justice system, any relaxation in those conditions will only create an atmosphere of threat in the minds of witnesses and may even derail the process of trial.

(c) So far, trial proceedings are yet to be started, this is an indication that the accused has been able to procrastinate the proceedings on one pretext or the other. If the request of the petitioner/A-1 seeking dispensation of his personal appearance in the Court on whatever grounds pleaded in the petition, will virtually entail him to liberate himself from the lawful restrictions.

(d) In all the 11 charge sheets, the petitioner/A-1 herein stands as an accused in his individual capacity and as representative of his privately owned companies and, therefore, should attend the Court, any reference to the revenue and financial conditions of the Government of Andhra Pradesh is only an attempt to deviate the attention of this Court from the real issue, which cannot be given credence. The Hon'ble Supreme Court has held in unequivocal terms that the economic offences constitute a class apart and need to be visited with a different

approach and the economic offence having deep rooted conspiracies involving huge loss of public funds needs to be viewed seriously.

(e) The Hon'ble Supreme Court itself has described the offences committed by the petitioner/A-1 as grave offences causing dent to the economy of State and affecting the economy of the country. The Court would not normally exercise its discretion to dispense with the appearance of the accused under Section 205 Cr.P.C. The distance from Vijayawada to Hyderabad is hardly 250-275 kms which cannot be a reasonable ground to justify his personal exemption on daily basis, but only once in a week in the advanced travelling facilities.

(f) The gravity of the accusations and the offences set out against the petitioner/A-1 in the case needs to be taken into consideration and Section 205 Cr.P.C. has to be applied to summons cases and the case now to be tried against the petitioner/A-1 is a warrant procedure. Now, the petitioner/A-1 himself being the Chief Minister of Andhra Pradesh with all the power at his control is only expected to further his personal interests and not otherwise.

(g) Appearance before the Court once in a week is only to remind the accused person that, however big they are outside the Court, they are subjected to the process of law and they are bound to abide by the lawful conditions of the Court. This Court has rightly pointed out in the order dt.23.09.2016 on a similar petition seeking exemption from his personal appearance that Section 273 Cr.P.C. mandates that the criminal proceedings in a criminal trial shall be conducted in the presence of the accused and it is also observed by this Court whenever necessary the Court was pleased to dispense the presence of the petitioner/A-1 on filing applications under Section 317 Cr.P.C. by making out the reasons.

(h) The Hon'ble High Court of Telangana and Andhra Pradesh at Hyderabad in common order dt.31.08.2017 in CRLP.Nos.7446, 7447, 7449/2017 has rightly pointed out that the petitioner/A-1 cannot avoid appearance before the Court on

the dates of adjournment. During the operation of the orders of the Hon'ble High Court, the lower Courts are precluded from entertaining similar petitions and the power of the Magistrate under Section 205 Cr.P.C. is purely discretionary in nature and such power has to be exercised judiciously.

(i) In the instant case, charges are yet to be framed, absence of the accused will hamper the proceedings and this Court was pleased to dismiss the similar petitions earlier filed by the petitioner/A-1 and other accused vide orders dt.04.02.2014 and 23.09.2016.

(j) Petitioner/A-1 has filed many petitions under Section 205 Cr.P.C. before this Court in rest of the CCs where he is shown as accused, which ended in dismissal and the petitioner/A-1 has carried the matters before the Hon'ble High Court, which also ended in dismissal. Earlier order passed by this Court under Section 205 Cr.P.C. was in force and the same was confirmed by the Hon'ble High Court, subsequently applications for the same relief cannot be maintained.

(k) This Court cannot alter the orders already passed under Section 205 Cr.P.C. which becomes *functus officio* and the Court can make clerical or arithmetical corrections as provided under Section 362 Cr.P.C., the presence of the petitioner/A-1 is required as per Section 273 Cr.P.C. The reasons mentioned in the petition for seeking exemption under Section 205 Cr.P.C. on public duty are against Article 14 of Indian Constitution and the application is devoid of merits and is liable to be dismissed in limini.

4. A reply is also filed by the petitioner/A-1 to the counter and denied the same in toto which are specifically admitted thereunder and further contended that the counter is baseless, contrary to record, without any merits, warrants no consideration.

5. Heard both sides. Perused the record.

6. Now, the points for determination are :

- 1) Whether the present application is maintainable in view of the dismissal of the first application in Crl.M.P.No.1753/2013 dt.04.02.2014, second application in Crl.M.P.No.1307/2016 dt.23.09.2016 filed under Section 205 Cr.P.C. confirmed by the Hon'ble High Court in CRLP.No.7446/2017 and batch vide order dt.31.08.2017 (against the order dt.23.09.2016) ? If so,**
- 2) Whether appearance of the petitioner/A-1 be dispensed with by permitting Sri G.Ashok Reddy, Advocate to represent on his behalf as Special Vakalat Holder ?**

POINT No.1 :

7. Office has taken an objection that the present application is not maintainable, when the earlier application filed by the petitioner/A-1 in Crl.M.P.No.1753/2013 under Section 205 of Cr.P.C. was dismissed on 04.02.2014 and the second application in Crl.M.P.No.1307/2016 under Section 205 Cr.P.C. was dismissed by this Court on 23.09.2016 for the same relief which was confirmed by the Hon'ble High Court in CRLP.Nos.7446/2017 and batch vide order dt.31.08.2017.

8. In pursuance of the maintainability of the application, Sri S.Niranjan Reddy, learned senior counsel for the petitioner/A-1 contended that the present application is filed on a different set of facts and in view of the changed circumstances and further contended that the earlier orders were passed on merits in spite of the applications filed for the same relief.

9. Learned Special Public Prosecutor contended that the present petition is not maintainable in view of the dismissal of earlier applications in the first round on 04.02.2014 and dismissal of similar applications in the second round on 23.09.2016, which was confirmed by the Hon'ble High Court in CRLP.Nos.7446/2017 and batch vide common order dt.31.08.2017.

10. (i) Petitioner/A-1 has filed Crl.M.P.Nos.1756/2013 to 1760/2013 in C.C.No.8/2012, C.C.No.9/2012, C.C.No.10/2012, C.C.No.12/2013, C.C.No.14/2012, Crl.M.P.No.1753/2013 in C.C.No.24/2013, Crl.M.P.No.1763/2013 in C.C.No.26/2013, Crl.M.P.No.1754/2013 in C.C.No.26/2013, Crl.M.P.No.1761/2013 in C.C.No.27/2013, Crl.M.P.No.1762/2013 in C.C.No.28/2013 under Section 205 Cr.P.C. with a prayer to permit him to appoint Sri G.Ashok Reddy, Advocate to appear on his behalf in the case, the grounds in the applications are that the petitioner/A-1 is a Member of Parliament, President of registered political party – YSR Congress Party and being in political and public life as a career option. Respondent/CBI has filed counter opposing the application. This Court vide order dt.04.02.2014 has dismissed the said application.

(ii) Petitioner/A-1 has also filed Crl.M.P.Nos.1303/2016 to 1312/2016 in C.C.Nos.9/2012, 10/2012, 12/2013, 14/2012, 24/2013, 25/2013, 26/2013, 27/2013, 28/2013 and 26/2014 under Section 205 Cr.P.C. with a prayer to permit him to appoint Sri G.Ashok Reddy, Advocate to appear on his behalf in the case and the same were dismissed on 23.09.2016 by separate orders, the ground set out in the applications are that the petitioner/A-1 in the course of his political activities has to tour throughout Andhra Pradesh on regular basis. Against the orders of this Court, petitioner/A-1 has preferred CRLP.No.7446/2017 and batch before the Hon'ble High Court, which were also dismissed by a common order dt.31.08.2017 by the Hon'ble High Court.

11. Learned senior counsel for the petitioner/A-1 has relied on the decisions in between :

(i) ***Reddy V.S. vs. M/s. Excel Glasses Ltd. and another [2010(3) ILR Kerala 215]***. The facts in the above judgment are that Reddy V.S. has issued three cheques totally for a sum of Rs.11,08,474/-, in discharge of a liability arising out of business transaction to the respondent/complainant, wherein Reddy V.S.

has purchased glass bottles from the complainant, when the cheques were presented for the payment, the same were dishonoured with an endorsement 'payment stopped by the drawer'. Reddy V.S. after accepting the process filed a petition before the Hon'ble High Court of Kerala vide Crl.M.C.No.2685/2004 seeking an order to quash the complaint under Section 482 of Cr.P.C. with a plea that the bottles supplied by the complainant when sent with medicinal products developed cracks. The Hon'ble High Court while disposing the Crl.M.C.No.2685/2004 issued a direction that if an application is filed by Reddy V.S. to exempt him from personal appearance in Court, the learned Magistrate shall consider the application on its merits and appropriate orders on the same shall be passed. Reddy V.S. has filed Crl.M.P.No.5555/2004 for exemption of his personal appearance, the same was dismissed on 23.04.2005 by the learned Magistrate. Reddy V.s. assailing the said order has filed Crl.M.C.No.1970/2005. Reddy V.S. has also filed Crl.M.P.No.355/2005 seeking an order of discharge, the same was dismissed on 23.04.2005 by the learned Magistrate. Assailing the legality and correctness of the order, Revision Petition is filed vide Crl.R.P.No.1687/2005, the Hon'ble High Court in para 12 of its judgment has held, as under :

"12. In the light of the precedents quoted and the provisions contained in sub-sec. 205 and 317 Cr.P.C., I find that in appropriate cases, the Magistrate can allow an accused to make even the first appearance through counsel. The learned Magistrate ought to have considered the petition filed by the petitioner on merits, irrespective of the fact that he didn't execute the bail bond. But having gone through the averments in the petition, I find that it didn't contain necessary particulars as was laid down by the Apex Court in M/s. Bhaskar Industries's case. In this view of the matter, I find that the learned Magistrate was correct in dismissing the petition, though the reasons stated is not correct. Crl.M.C. is devoid of merit and is liable to be dismissed."

(ii) ***Chintamani Dyan Samantray vs. Triguna Tito Deb [2007 SCC Online Orissa 368]***. The facts in the above judgment are that Chintamani Dyan Samantray is one of the accused in I.C.C.No.3139/2005 pending before the Court

of S.D.J.M., and he filed an application under Section 205 Cr.P.C. which was dismissed by the S.D.J.M., on 29.07.2006 on the ground that earlier a similar petition under Section 205 Cr.P.C. filed by the petitioner had already been rejected by the said Court. Chintamani Dyan Samantray aggrieved by the order had filed Crl.M.C.No.2405/2006 before the Hon'ble Orissa High Court. The Hon'ble High Court at para 5 of the judgment has held, as under :

"5.....the finding of the Court below that once a petition under section 205 of Cr.P.C. is rejected, subsequent similar petition cannot be entertained is per se illegal as held by this Court in the case of *Debasis Samantaray v. State of Orissa [2003(2) OLD 219]*. Perused the said judgment. At paragraph-7 of the judgment this Court held that even if an application under section 20-5 of Cr.P.C. had been rejected earlier, a similar petition can be filed at subsequent stage. So the finding of the learned Trial Court as rightly submitted by the learned Counsel for the petitioner is erroneous and as such, cannot stand."

12. The reasons set out by the petitioner/A-1 in the present application is that in the General Elections held on 11.04.2019, the petitioner/ A-1's political party has secured 151 MLA seats out of 175 Legislative Assembly seats in Andhra Pradesh and the petitioner/A-1 has assumed the office as Chief Minister of Andhra Pradesh. As rightly contended by the learned counsel, the facts mentioned in the earlier applications and the facts mentioned in the present application differ from each other and the decision cited by the learned senior counsel in ***Chintamani Dyan Samantray*** is applicable to the case on hand, the other decision is not applicable to the case facts.

13. In view of the discussion above and in view of the decision of the Hon'ble High Court and in view of the changed circumstances, the present application is maintainable for the relief prayed for. Hence, this point is answered accordingly.

POINT No.2 :

14. Petitioner is arraigned as A-1 in the present case and also in all the other cases where CBI has filed charge sheets and cognizance for different offences were taken.

15. (i) The cases pending against the petitioner/A-1 and other accused, their details are as under :

S. No.	Charge Sheet	Issue Name	CC Number	Section of Law
1	1 st Charge Sheet	M/s. Hetero & Aurobindo Pharma	CC.8/2012	Ss.120-B, 409, 420, 468 & 471 of IPC, Sec.12 r/w 11 of P.C. Act and Sec.13(2) r/w 13(1)(d) of P.C. Act.
2	2 nd Charge Sheet	Individual Investors	CC.9/2012	Ss.120-B, 420, 468 & 471 of IPC, S.9 of P.C. Act.
3	3 rd Charge Sheet	M/s. Ramky	CC.10/2012	Ss.120-B, 409, 420, 468 & 471 of IPC and Ss.9 & 12 of P.C. Act.
4	4 th Charge Sheet	M/s. VANPIC	CC.14/2012	Ss.120-B, 409, 419, 420, 467 468, 471 & 477-A of IPC, Ss.9 & 12 of P.C. Act and S.13(2) r/w 13(1)(c)(d) of P.C. Act.
5	5 th Charge Sheet	M/s. Dalmia Cements	CC.12/2013	Ss.120-B, 409 & 420 of IPC, Ss.9 & 12 of P.C. Act and S.13(2) r/w 13(1)(c)(d) of P.C. Act.
6	6 th Charge Sheet	M/s. India Cements	CC.24/2013	Ss.120-B & 420 of IPC and Ss.9 & 12 of P.C. Act.
7	7 th Charge Sheet	M/s. Raghuram Cements	CC.25/2013	Ss.120-B, 420 & 107 of IPC and S.13(2) r/w 13(1)(d) of P.C. Act.
8	8 th Charge Sheet	M/s. Penna Cements	CC.26/2013	Ss.120-B & 420 of IPC and Ss.9 & 12 of P.C. Act.
9	9 th Charge Sheet	M/s. Indu Techzone	CC.27/2013	Ss.120-B, 409, 420, 468 & 471 of IPC, Ss.9 & 12 of P.C. Act and S.13(2) r/w 13(1)(c)(d) of P.C. Act.
10	10 th Charge Sheet	M/s. Lepakshi Knowledge Hub	CC.28/2013	Ss.120-B, 409, 420, 468, 471 & 477-A of IPC, Ss.9 & 12 of P.C. Act and S.13(2) r/w 13(1)(c)(d) of P.C. Act.
11	11 th Charge Sheet	M/s. AP Housing Projects	CC.26/2014	Ss.120-B, 409, 420, 468 & 477-A of IPC, Ss.9 & 11 of P.C. Act and S.13(2) r/w 13(1)(c)(d) of P.C. Act.

(ii) Case is taken on file against the petitioner/A-1 in C.C.No.24/2013 under Sections 120-B r/w Section 420, 420 of IPC and under Sections 9 and 12 of P.C. Act, 1988.

16. Petitioner/A-1 was arrested and released on bail as per the orders in Crl.M.P.No.1388/2013 in C.C.No.8/2012 dt.23.09.2013 subject to conditions, which are as under :

- i. Mr. Y.S.Jagan Mohan Reddy/Petitioner/A-1 shall be enlarged on bail on his executing a bond for Rs.2,00,000/- (Rupees two lakh only) with two sureties each for like sum to the satisfaction of this Court.
- ii. The Petitioner/A-1 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.
- iii. Petitioner/A-1 shall stay at Hyderabad and shall not leave Hyderabad without prior permission of the Court.
- iv. The Petitioner/A-1 shall appear before this Court on the dates fixed for hearing of the case without fail. He may remain absent only in unavoidable circumstances and with the permission of the Court.
- v. The Respondent/CBI has liberty to make a proper application for cancellation of the bail, if the Petitioner/A-1 violates any of the conditions imposed by this Court."

17. Petitioner/A-1 filed Crl.M.P.No.2323/2015 in Crl.M.P.No.1388/2013 in C.C.No.8/2012 to relax condition Nos.(iii) & (iv) of the bail order, vide order dt.11.12.2015 this court relaxed condition No.(iii), by modifying condition No.(iv) directing the petitioner/A-1 shall remain absent only in any unavoidable circumstances for appropriate reasons to be made out, subject to filing appropriate application.

18. Petitioner/A-1 aggrieved by the refusal to relax condition No.(iv) in Crl.M.P.No.2323/2015 in Crl.M.P.No.1388/2013 in C.C.No.8/2012 dt.11.12.2015,

has preferred CRLP.No.2239/2016 before the Hon'ble High Court and the same was dismissed on 31.08.2017.

19. In all the cases shown in the table supra, charges are yet to be framed and the matters are being posted on every working Friday, it is so being followed in view of the directions of the Hon'ble High Court in PIL.No.145/2015 dt.10.08.2015.

20. (i) In the first round, petitioner/A-1 has filed applications in all the cases under Section 205 Cr.P.C. seeking permission to appoint Sri G.Ashok Reddy/ Advocate to appear on his behalf, the Crl.M.P. numbers are shown in para No.10(i) of the order supra and on contest, they came to be dismissed on 04.02.2014, with an observation that the petitioner alleged to have committed white collar offence.

(ii) In the second round petitioner/A-1 has filed similar applications in all the cases under Section 205 Cr.P.C. seeking permission to appoint Sri G.Ashok Reddy/ Advocate to appear on his behalf, the Crl.M.P. numbers are shown in para No.10(ii) of the order supra and on contest, they came to be dismissed on 23.09.2016, with an observation that changed circumstances, so called, have no bearing, when nature of allegation made by the prosecution against him are considered, aggrieved by the above said orders, petitioner/A-1 has preferred CRLP.Nos.7446/2017 and batch and the details are mentioned hereunder :

S. No.	Criminal Petitions before Hon'ble High Court		Crl.M.P.No.		C.C. No.
1	CRLP.No.7446/2017	Preferred against	Crl.M.P.No.1303/2016	In	CC.No.9/2012
2	CRLP.No.7447/2017	Preferred against	Crl.M.P.No.1304/2016	In	CC.No.10/2012
3	CRLP.No.7449/2017	Preferred against	Crl.M.P.No.1306/2016	In	CC.No.14/2012
4	CRLP.No.7450/2017	Preferred against	Crl.M.P.No.1308/2016	In	CC.No.25/2013
5	CRLP.No.7452/2017	Preferred against	Crl.M.P.No.1307/2016	In	CC.No.24/2013
6	CRLP.No.7461/2017	Preferred against	Crl.M.P.No.1312/2016	In	CC.No.26/2014
7	CRLP.No.7473/2017	Preferred against	Crl.M.P.No.1309/2016	In	CC.No.26/2013
8	CRLP.No.7478/2017	Preferred against	Crl.M.P.No.1310/2016	In	CC.No.27/2013
9	CRLP.No.7479/2017	Preferred against	Crl.M.P.No.1305/2016	In	CC.No.12/2013
10	CRLP.No.7480/2017	Preferred against	Crl.M.P.No.1311/2016	In	CC.No.28/2013

21. All the Criminal Petitions were dismissed by the Hon'ble High Court vide common order dt.31.08.2017.

22. Learned senior counsel, Sri S.Niranjan Reddy, has drawn the attention of this Court to the provisions of Section 205 Cr.P.C. and Section 317 Cr.P.C., for convenience sake they are extracted hereunder :

205. Magistrate may dispense with personal attendance of accused: (1) 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.

(2) But the 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 a manner hereinbefore provided.

317. Provision for inquiries and trial being held in the absence of accused in certain cases: (1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

23. The reasons set out in the present application are that the petitioner/A-1 has assumed the office as Chief Minister of Andhra Pradesh and striving his best to discharge public duty, the State of Andhra Pradesh is facing huge revenue deficit and the petitioner/A-1 is working relentlessly in addressing the issues and his continuous presence is necessary. Petitioner/A-1 need to travel from Vijayawada every Thursday and return back on Friday night and he would be away from the State of Andhra Pradesh for two days in a week, the petitioner/A-1 entails the

protocol and security related details whenever he travels and they are to be maintained at public expenses.

24. Learned senior counsel placed reliance on the decisions in ***Bhaskar Industries Ltd., vs. Bhiwandi Denim & Apparels Ltd., and others [(2001) 7 SCC 401]***. The facts in this case are that accused who is a resident of Haryana was to appear in a Court at Bhopal. The Hon'ble Supreme Court has observed in para Nos.13, 14, 18 and 19, as under :

“**13.** Sub-section (1) envisages two exigencies when the court can proceed with the trial proceedings in a criminal case after dispensing with the personal attendance of an accused. We are not concerned with one of those exigencies i.e. when the accused persistently disturbs the proceedings. Here we need consider only the other exigency. 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 that accused. In this context, a reference to Section 273 of the Code is useful. It says that :

“273. Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.”

If a court feels that insisting on the personal attendance of an accused in a particular case would be too harsh on account of a variety of reasons, can't the court afford relief to such an accused in the matter of facing the prosecution proceedings?

14. 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. The concern of the criminal court should primarily be the administration of criminal justice. For that purpose the proceedings of the court in the case should register progress. Presence of the accused in the court is not for marking his attendance just for the sake of seeing him in the court. It is to enable the court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the court in that particular case.

18. A question could legitimately be asked – what might happen if the counsel engaged by the accused (whose personal appearance is dispensed with) does not appear or that the counsel does not cooperate in proceeding with the case? We may point out that the legislature has taken care of such eventualities. Section 205(2) says that the Magistrate can in his discretion direct the personal attendance of the accused at any stage of the proceedings.

The last limb of Section 317(1) confers a discretion on the Magistrate to direct the personal attendance of the accused at any subsequent stage of the proceedings. He can even resort to other steps for enforcing such attendance.

19. The position, therefore, boils down to this: it is within the powers of a Magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the Magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations on him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the Magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the Magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course. We may reiterate that when an accused makes an application to a Magistrate through his duly authorised counsel praying for affording the benefit of his personal presence being dispensed with the Magistrate can consider all aspects and pass appropriate orders thereon before proceeding further."

25. In ***Basavaraj R. Patil and others vs. State of Karnataka and others [(2000) 8 SCC 740]*** the Hon'ble Supreme Court has observed in para No.25, as under :

"25. If the accused (who is already exempted from personally appearing in the court) makes an application to the court praying that he may be allowed to answer the questions without making his physical presence in court on account of justifying exigency the court can pass appropriate orders thereon, provided such application is accompanied by an affidavit sworn to by the accused himself containing the following matters:

(a) A narration of facts to satisfy the court of his real difficulties to be physically present in court for giving such answers.

(b) An assurance that no prejudice would be caused to him, in any manner, by dispensing with his personal presence during such questioning.

(c) An undertaking that he would not raise any grievance on that score at any stage of the case.

26. In ***Shri Chandramauli Prasad & others vs. State of Delhi [ILR (2009) II Delhi 48]*** wherein the Hon'ble Delhi High Court has held that "the petitioners are exempted from personal appearance in SC.No.30/2006 arising out

of FIR.No.166/2019 under Section 308/34 IPC. The Hon'ble Delhi High Court has referred the case of *Dr. Prakash Amrut Mody vs. State of Jharkhand [2008 (1) BLJ 58]* wherein it is observed that discretion to dispense the personal attendance would also depend upon the gravity of offence, the Magistrate should not adopt too technical or stringent approach though the discretion should not be used liberally on the mere asking of it."

27. In ***M.Shyam Prasad Reddy and others Vs. State of Andhra Pradesh and another [1992 (1) APLJ 413]*** the petitioners therein have filed application under Section 205 Cr.P.C. basing on the directions of the Hon'ble High Court vide Crl.M.P.No.145/1992 in C.C.No.207/1991 which came to be dismissed on 22.01.1992 by the learned Magistrate at Gudur. Aggrieved by the said order, Shyam Prasad Reddy and others approached the Hon'ble High Court and the Hon'ble High Court has held at para 8, as under :

"8. From the averments contained in the petition, the petitioners have specifically pointed out the reasons as to why they are unable to appear before the Court and are seeking for dispensation of their personal appearance, as they are very busy in their respective fields and it would be difficult for them to be present in person on every date of hearing. Therefore having regard to the circumstances of the case and the provisions of Section 205 Cr.P.C. the personal appearance of the petitioners should have been dispensed with."

28. In ***Arvind Kejriwal Vs. State & others [Crl.M.C.No.3306/2016 & Crl.M.A.No.14056/2016, dt.06.12.2016]***, the facts are that Arvind Kejriwal is facing trial in Complaint Case No.201/2013 pending before the Metropolitan Magistrate, New Delhi District, Patiala House Court, New Delhi, wherein he has been summoned for the offences punishable under Section 500 r/w Section 34 of IPC, the ground for his exemption is that he is a Chief Minister of Delhi and has to travel frequently within the State and outside the State and the Hon'ble High Court of Delhi has granted permanent exemption from appearance before the learned trial Court through his counsel.

29. In ***Hiremagalur Parthsarthy Shamalah and etc. Vs. State of Bihar & Another [2009 SCC On Line Patna 497]***, the facts are that Shamla and K.C.Das after receipt of summons before the concerned Court filed petitions under Section 205 Cr.P.C. for dispensing with their personal appearance and to be represented through their counsel, the reasons set out in their petitions are that they are posted at a different places and it is difficult for them to appear before the Court, the same were dismissed by the Court on the ground that cognizance is taken and the offences being non-bailable (Sections 409, 420, 468, 471 and 120-B of IPC). Shamla and K.C.Das filed Criminal Revisions before Hon'ble Patna High Court wherein the Hon'ble High Court has held that revisionists are highly professionals posted at Pune and Shillong respectively while trial is to be conducted at Patna and the offences alleged are non-bailable those by themselves cannot be reasons for rejecting the prayer and allowed both the revisions.

30. In ***Ajit Kumar Chakraborty & others Vs. Serampore Municipality [1988 SCC OnLine Calcutta 118]***. The facts are that a complaint is filed under Section 501 of the Bengal Municipal Act, 1932 before the learned Sub-Divisional Judicial Magistrate, Serampur against Ajit Kumar Chakraborty and others. After service of summons on Biswant Chakraborty he filed application under Section 205(i) Cr.P.C. to dispense his personal attendance on the ground that he is a member of West Bengal Higher Judicial Services. Learned Sub-Divisional Magistrate observed that the petition would be considered only after the personal appearance of Biswant Chakraborty and by order dt.15.06.1983 fixed 19.07.1983 for the purpose. Biswant Chakraborty approached Hon'ble High Court of Calcutta and filed Revision wherein the Hon'ble High Court has held at para No.16 that the offence under Section 501 of the Act is of a technical nature, fine is only punishment. We, therefore, failed to understand why the learned Sub-Divisional

Judicial Magistrate insisted on dragging a Senior Judicial Officer to Court specially when, the case rests primarily on documentary evidence.

31. Learned senior counsel sought to be made distinction under Section 205 Cr.P.C. and reference is also made under Section 317 Cr.P.C., emphasis is made that personal attendance of the accused before the Court for the reason to be recorded by the Judge or Magistrate can be dispensed with when he is represented by Pleader and the Court can proceed further with such enquiry or trial in his absence.

32. As stated in para No.20 of the order supra, the Hon'ble High Court has dismissed the Criminal Petition filed by the petitioner/A-1.

33. It is apt to extract the observations of the Hon'ble High Court as under :

“The main contention of the learned Senior Counsel for the petitioner is that, if the Court insists the appearance of the petitioner on all dates of adjournment, the petitioner will be put to serious harassment and embarrassment and it effect his personal movements within the State, being President of Y.S.R. Congress Party and also Leader of Opposition Party in the Andhra Pradesh Legislative Assembly to meet the public and to raise the issues before the Assembly. No doubt, it would restrict the petitioner's movements on Friday of every week only when cases are taken up by the Court below and in rest of the days in the week, the petitioner can interact with the public, so as to raise the public issues in the Assembly. Insistence of petitioner's appearance before the Court below would not infringe personal liberty guaranteed under Article 21 of the Constitution of India, since such liberty can be deprived by law. Appearance of the accused in criminal cases on the dates of adjournment is mandated by the procedure, unless his appearance is exempted by the Court by exercising power under Section 205 Cr.P.C. or dispense with the petitioner's appearance on the dates of adjournment by exercising power under Section 317 Cr.P.C. When the law mandates appearance of the accused in cases like grave economic offences, it would not amount to infringement of fundamental right guaranteed under Article 21 of the Constitution of India.

Undoubtedly, it is the obligation of the petitioner in different capacities stated above to be in public life and to interact with the public and to raise public issues in the Andhra Pradesh State Assembly. But, that itself is not a ground to exempt the petitioner from his appearance before the Court, as he is required to appear

before the Court on one day in a week i.e. on Friday, as per the allegations made in the petitions.

.....

Learned Senior Counsel Sri S.Niranjan Reddy contended that, insisting the petitioner to appear before the Court on every date of adjournment is nothing but harassment to the petitioner, who being the Leader of Opposition Party in A.P. State Legislative Assembly and President of Y.S.R. Congress Party. Undoubtedly, though the petitioner is elected as Member of Legislative Assembly from Pulivendula Constituency, Y.S.R. Kadapa District, it appears in the cause-titles of the above petitions that the petitioner is ordinarily a resident of Hyderabad City for the last few years. Moreover, after registration of crimes and enlarging him on bail, the petitioner is able to pursue his political career moving from one corner of the State of Andhra Pradesh to another to interact with the public of the State. Despite subsisting condition imposed on the petitioner to appear before the Court, the petitioner filed petitions under Section 317 Cr.P.C. and obtained exemptions on the date of adjournments on several occasions. No occasion was brought to the notice of this Court where the Court below dismissed applications filed for dispensing with the petitioner's personal appearance. But, a specific cause is suddenly invented after four years to exempt him to undertake Padayatra in the State as a President of Y.S.R. Congress Party.

No doubt, the petitioner is entitled to pursue his political career as he has chosen politics as his profession or avocation. But, on the alleged reason of pursuing his political career, the petitioner cannot avoid appearance before the Court on the dates of adjournment. The petitioner is required to appear before the Court on the date of adjournment only once a week i.e. on Friday, on all other days including Sunday, the petitioner can conveniently pursue his politics without any holiday. Moreover, the petitioner and the other accused for one reason or other are causing hurdles to the Court below from proceeding further and latches or delay in dispensation of justice is not on the part of the Court, but the delay is attributable to the petitioner due to filing of successive applications under different provisions of law, one after the other, either by the petitioner or the co-accused in different Courts, and obtaining interim orders. If the delay is on the part of the Court, there is some justification to lament the Court for non-disposal of the case and keeping the matter pending for many years. But, when the delay is attributable to the petitioner/accused in all the cases, the petitioner by taking advantage of such delay cannot claim exemption of his appearance who involved in serious and grave financial fraud which dent the financial health of the entire country. Therefore, appearance of the petitioner cannot be exempted in view of the gravity and seriousness of the economic fraud involving crores of rupees.

.....

In view of my foregoing discussion, I find that the Court below did commit no error in dismissing Crl.M.Ps mentioned in column (C), warranting interference of this Court by exercising jurisdiction under Section 482 Cr.P.C., since the petitioner allegedly committed grave and serious economic offences and the possibility of the petitioner misusing such exemption, if granted, cannot be ruled out on account of involvement political activities like taking up Padayatra etc.”

34. Before filing the batch of petitions in the present case in the present form under Section 205 Cr.P.C. petitioner/A-1 has filed Crl.M.P.2274/2017 in C.C.No.8/2012, Crl.M.P.No.2275/2017 in C.C.No.9/2012, Crl.M.P.No.2277/2017 in C.C.No.10/2012 and Crl.M.P.Nos.2279/2017 to 2286/2017 in C.C.No.17/2012, C.C.No.12/2013, C.C.No.24/2013, C.C.No.25/2013, C.C.No.26/2013, C.C.No.27/2013, C.C.No.28/2013 and C.C.No.26/2014 under Section 317 Cr.P.C. to dispense his personal appearance before the Court for a period of six months from 02.01.2017 to 02.05.2018, the reasons set out in the above said applications are that the petitioner/A-1 has announced Padayatra and he would walk more than 3000 kms. All the above said applications came to be dismissed by a common order on 23.10.2017 by my learned predecessor holding that, the petitioner cannot expect, nor this Court exercise discretion to dispense with his appearance for six months, and as per the record, the said order has become final.

35. The Hon'ble Supreme Court in a case relating to the bail of ***Y.S.Jagan Moha Reddy vs. Central Bureau of Investigation [AIR 2013 SC 1933]*** has held that “economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracy and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

36. Learned senior counsel contended that in view of the change of the petitioner/A-1's public duties as Chief Minister of Andhra Pradesh, it is difficult for him to appear on each and every date of hearing and there are security protocols which are to be maintained at public expenses, he will be away from the State of Andhra Pradesh for nearly two days.

37. Per contra, learned Special Public Prosecutor contended that there are no changed circumstances as far as the case is concerned, the change of status of the petitioner/A-1 is not a ground to consider the application and any orders passed by the Court may amount to review of the earlier orders and the gravity of the offence was discussed by the Hon'ble High Court.

38. Though the condition No.(iv) in Crl.M.P.No.1388/2013 in C.C.No.8/2012 dt.23.09.2013 was modified directing the petitioner shall remain absent only in any unavoidable circumstances for appropriate reasons to be made out, subject to filing an appropriate petition, which is also confirmed by the Hon'ble High Court in CRLP.No.2239/2016, dt.31.08.2017.

39. Petitioner/A-1 has assumed the office as Chief Minister of Andhra Pradesh on 30.05.2019, since then the petitioner/A-1 is requesting this Court to dispense his personal appearance by filing applications under Section 317 Cr.P.C. in all the batch of cases in which he is arraigned as A-1 making out the reasons, those applications are being considered by this Court in all the batch of cases by allowing them, permitting his counsel to represent him during course of hearing.

40. Though the present application is filed on the changed circumstances, the Hon'ble High Court has discussed in CRLP.Nos.7446/2017 and batch about the gravity of offence and the Hon'ble Supreme Court has also described that the offences committed by the petitioner/A-1 are grave offences causing dent to the

economy of the State and affecting the economy of the country and they are grave in nature.

41. Insofar as security protocol which are to be maintained at public expenses, and being away for 2 days from Andhra Pradesh (Amaravathi) is also not a ground to invoke the discretion of the Court, when viewed from the allegations in the charge sheet. As rightly contended by the Special Public Prosecutor that change of status of the petitioner/A-1 is not a ground to consider the application.

42. Taking into consideration the facts and circumstances of the case and the changed circumstances set out by the petitioner/A-1 in the application, has no bearing when the offences and allegations made by the respondent/CBI are grave in nature.

43. The decisions cited by the learned senior counsel in *Bhaskar Industries, Basavaraj R. Patil, M.Shyam Prasad Reddy* were already considered by the Hon'ble High Court in CRLP.Nos.7446/2017 and batch and the rest of the rulings do not support the case of the petitioner/A-1 as the facts therein differ from the case on hand. In criminal proceedings, trial should be conducted in presence of the accused as contemplated under Section 273 of Cr.P.C.

44. In view of the reasons above and considering the material on record, taking into consideration the gravity of the offence, petitioner/A-1 is not entitled for the relief under Section 205 Cr.P.C. warranting discretion of this Court. Hence, the petition is dismissed.

45. **In the result**, the petition is dismissed.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 1st day of November, 2019.

Sd/-
PRINCIPAL SPECIAL JUDGE
FOR CBI CASES: HYDERABAD.