

21.02.24

The petition filed by the learned counsel of the petitioner namely Sri Hemant Soren on 20.02.24 is pressed today. That as the sitting Member of the Legislative Assembly (MLA) in the current Jharkhand Vidhan Sabha, the applicant has a right to appear in the said Session of the Jharkhand State Legislative Assembly and participate in the said Session. The applicant is, therefore, filing the present application seeking an order from this court to permit the applicant to attend the Session of the Jharkhand Legislative Assembly and participate in the proceedings on 23.02.2024 at 11:00 A.M. up to 02.03.2024 as per the agenda enclosed. It is further submitted that it is a Budget Session and Budget Session comprises of bills such as money bills and other financial bills. The money bill is considered to be a most crucial bill for any Legislative Assembly and the same fact can be easily determined by Article 198 of the Constitution of India which provides for Special procedure in respect of the money bill. It is also the submission of the learned counsel that the money bill is crucial because it put to vote which amounts to a confidence vote on government. Therefore, it is very essential for the petitioner to remain present in the Jharkhand Legislative Assembly Budget Session and participate in the proceeding on 23.02.24 at 11:00 A.M. up to 02.03.24 as per the agenda enclosed with the petition. Learned counsel has annexed notice of the Secretary, Jharkhand Legislative Assembly the notification regarding Session of the Legislative Assembly and agenda to be discussed during the current Session. The learned counsel also submitted that there are several instances where the Hon'ble Supreme Court has given permission to MLA & M.P. of different Legislative Assembly and Parliament respectively to take part in the voting of assembly while they were in

custody. In this regard learned counsel cited the judgments (1) Nalin Soren vs. State of Jharkhand SLP (CrI) No. 5859/2013 dated 18.07.2013; (2) Nalin Soren vs. State of Jharkhand 2013 SCC OnLine Jhar 1216 dated 26.07.13; (3) Mohd. Shahabuddin vs. State of Bihar & ors . Writ petition (C) No. 444 of (2007) 10 Supreme Court dated 8th August 2007; (4) Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and others (2005)3 Supreme Court dated 05.05.2004 & (5) Dhullu Mahto vs. State of Jharkhand & ors W.P. (Cr.) No. 72 of 2020 dated 18.06/20.

On the other hand, learned Spl.P.P. on behalf of Directorate of Enforcement submits that Section 62(5) of the Representation of People Act 1951 is specifically says that "no person shall vote in any election if he is confined in a prison whether under a sentence of imprisonment or transportation or otherwise or is in the lawful custody of the police". The learned Spl.P.P. further argued that the word '**any election**' denotes that a person in custody cannot be allowed to take part in any voting either during Budget Session or confidence motion or during election. Whereas learned counsel for the petitioner says the word election defined in Section 2(d) of the Representation of People Act connotes the election of Legislative Assembly or Parliament and not the voting right inside the Legislative Assembly. As such Section 62(5) of the Representation of People Act does not apply to the given situation. The Spl.P.P. also cited the judgment of Hon'ble Apex Court Anukul Chandra Pradhan vs. Union of India and others Writ petition (CrI) No. 137 of 1996 dated 9th July 1997 by which judgment the Hon'ble Apex Court has upheld the constitutional validity of Section 62(5) of the Representation of People Act with an observation that right to vote is subject to the limitations imposed by the

statute which can be exercised only in the manner provided by the statute and challenge to any provision in the statute prescribing the nature of right to elect cannot be made with respect to a fundamental right in the constitution.

Heard both the sides and perused the materials on record. ***Hon'ble Bombay High Court in a case Mohammad Nawab Mohammad Islam Malik @ Nawab Malik vs. Directorate of Enforcement and State of Maharashtra while deciding Bail Application no. 1787 of 2022 dated 17th June 2022 and Bail Application no. 1021 of 2022 relating to Anil Basant Rao Deshmukh vide its order dated 17.06.2022*** has been pleased to reject the application of applicant to participate in Rajya Sabha election in the capacity of members of Maharashtra Legislative Assembly after referring para 5 to 8 of the judgment of ***Hon'ble Supreme Court in Anukul Chandra Pradhan vs. Union of India (1997) 1 SCC 1***, The Hon'ble Supreme Court in ***Anukul Chandra Pradhan vs. Union of India (1997) 1 SCC 1*** has been pleased to observe that a person who is in prison as a result of his own conduct and is, therefore, deprived of his liberty during period of his imprisonment cannot claim equal freedom of movement, speech and expression with the other who are not in prison. Restriction on voting right of a person in prison result automatically from his confinement as a logical consequence of imprisonment. In view of restriction on movement of a prison taken claim that he should be provided the facility to go and vote. ***The Hon'ble Rajasthan High Court in a case of Banwarilal Kushwaha vs. State of Rajasthan and others reported in 2016 SCC OnLine Raj. 3359*** has taken the similar view. Further the ***Hon'ble Supreme Court in Anurag Kumar Singh vs. State of Uttrakhand and others in Civil Appeal***

No. 8334 of 2013 has been pleased to observe that exercising judicial discretion courts cannot give any direction contrary to the statute or rule made thereunder.

Further all the judgments cited by the petitioner's counsel have been delivered either by the Hon'ble Supreme Court or by the Hon'ble High Court by applying its extraordinary jurisdiction. Hence on the basis of above discussed fact in the opinion of this court the present petition of the petitioner deserves to be rejected. Accordingly petition of the petitioner stands rejected.

(Dictated)


22.02.24
Spl. Judge, PMLA, Ranchi.