

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) NOS. 19025-19027 OF 2025

SUDHIR KHAITAN

...PETITIONER(S)

VERSUS

STATE OF RAJASTHAN & ORS.

...RESPONDENT(S)

ORDER

1. The present Special Leave Petitions arise from the order dated 29.10.2025¹ passed by the Jaipur Bench of the Rajasthan High Court, whereby the revision petitions and the application for suspension of sentence were not taken up for consideration on the ground that the Petitioner had not surrendered.

2. Rule 311(3) of the Rajasthan High Court Rules 1952 mandates that in cases involving a sentence of imprisonment, an appeal or revision must be accompanied by a certificate stating that the accused has surrendered if he is not on bail.

3. Interpreting a similar provision, this Court in *Vivek Rai v. High Court of Jharkhand*² held that the mandate of the Rule would not dilute the inherent power of the Court to consider and grant an exemption from surrendering. The relevant part of the judgment is extracted below for ready reference.

“11. It has not been disputed even by the learned counsel for the High Court that the Rule does not affect the inherent power of the High Court to exempt the requirement of surrender in exceptional situations. It cannot thus, be argued that prohibition against posting of

1 S.B. Crl. Revision Petition Nos. 1221/2025, 1260/2025 and 1870/2025.

2 (2015) 12 SCC 86

a revision petition for admission applies even to a situation where on an application of the petitioner, on a case being made out, the Court, in exercise of its inherent power, considers it appropriate to grant exemption from surrender having regard to the nature and circumstances of a case. Thus, the exception as found in corresponding Supreme Court Rules that if the Court grants exemption from surrender and directs listing of a case, the Rule cannot stand in the way of the Court's exercise of such jurisdiction, has to be assumed in the impugned Rule.

12. In these circumstances, we do not find any ground to hold that the impugned Rule suffers from any infirmity. The writ petition is accordingly, dismissed."

4. However, in the subsequent decision in *Daulat Singh v. State of Madhya Pradesh*³, this Court expressed doubt regarding the proposition that the High Court may, in exercise of its inherent powers, exempt the requirement of surrender, observing that such a proposition is "debatable" and holding that it would not be appropriate to accept it as a sound proposition of law, particularly in cases involving concurrent findings of conviction. Although the Court observed that a reference to a larger Bench would be desirable, no such reference was ultimately made, as the Special Leave Petition itself was dismissed. The relevant part of the order is extracted below for ready reference:

*"7. The judgment and order dated 25.01.2024, by which the High Court thought it fit to dismiss the application of the petitioner seeking exemption on the ground that the same is not maintainable, is challenged in this special leave petition on the primary contention that the same is in the teeth of the decision of this Court in *Vivek Rai & Anr. vs. High Court of Jharkhand*. Relying on paragraph 11 of such decision, learned counsel appearing for the petitioner contends that it is well settled principle of law that the High Court, in exercise of its inherent power, may consider it appropriate to grant exemption from surrendering having regard to the nature and circumstances of a particular case; and, in view thereof, the High Court was in error in holding that in no case is an application seeking exemption from surrendering is maintainable.*

3 Order dated 30.07.2024 passed in Special Leave Petition (Criminal) Diary No(s). 20900/2024.

8. We do not agree with the submission advanced on behalf of the petitioner for the reasons that follow.

9. *Vivek Rai (supra)* is a decision rendered on a writ petition under Article 32 of the Constitution, wherein Rule 159 of the High Court of Jharkhand Rules, 2001 was impeached as constitutionally invalid. Such rule was noted in paragraph 2 of the decision. Though not similarly worded, Rule 159 of the 2001 Rules bears resemblance with Rule 48 of the 2008 Rules and while seeking to demand the same requirement is intended to achieve the same purpose as Rule 48.

10. A reading of paragraph 11 of the decision in *Vivek Rai (supra)*, which according to learned counsel contains the ratio of the judgment, reveals a concession given by the learned counsel appearing for the High Court of Jharkhand that Rule 159 of the 2001 Rules does not affect the inherent power of the high court to exempt the requirement of surrender in exceptional situations. This was followed by the observation:

“It cannot thus, be argued that prohibition against posting of a revision petition for admission applies even to a situation where on an application of the petitioner, on a case being made out, the Court, in exercise of its inherent power, considers it appropriate to grant exemption from surrender having regard to the nature and circumstances of a case.”

11. If indeed such observation has to be construed as a proposition of law having been laid down by this Court that a high court in exercise of its inherent powers may, in exceptional cases, exempt the requirement of surrender, as learned counsel would wish us to construe, we find such proposition to be debatable. Inherent powers of a high court saved by Section 482 of the Code of Criminal Procedure are to be exercised to make such orders as may be necessary to give effect to any order under the Code (emphasis supplied by us) or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It could lead to a travesty of justice if Section 482 of the Code were read in a manner extending liberty to a convict to urge a high court to exercise its inherent power to grant exemption from surrender prior to entertainment of a revision petition, when there are concurrent findings rendered by two courts of competent jurisdiction – conviction recorded by the trial court and affirmance thereof by the appellate court - and particularly when it is the duty of a high court, even under Section 482, to give effect to orders passed under the Code.

12. Significantly, the legislature having thought it fit to introduce a provision enabling a convict to seek benefit of suspension of sentence pending an appeal did so by enacting Section 389 of the Code. The Code has no provision permitting an application to seek exemption from surrender. We are minded to hold that the omission in the Code with regard to providing an avenue for a convict suffering a sentence to seek exemption from surrender, pending a revision, is a conscious

act of the legislature.

13. We also find that there are specific provisions in the Supreme Court Rules, 2013 providing for an application for exemption from surrendering to be made, but similar such provision is not otherwise available in the 2008 Rules framed by the High Court.

14. It is a cardinal principle that while gathering the legislative intent, attention has to be paid to what has been said as well as what has not been said.

15. We do not, therefore, consider it appropriate to accept as a sound proposition of law that a high court, in exercise of its inherent power, may grant exemption from surrendering in a particular case despite concurrent findings of conviction oblivious of the duty of giving effect to orders passed under the Code and/or to prevent abuse of the process of a court.

16. Having regard to our disagreement with the view expressed in Vivek Rai (supra), which is a decision of a coordinate Bench, reference to a larger Bench is desirable. However, notwithstanding the same and notwithstanding the finding on maintainability returned by the High Court, we have looked into the merits of the petitioner's claim; and, having regard to the order we propose to pass, we do not consider it necessary to make a reference."

5. We are of the opinion that this uncertainty about the obligation to surrender under Rule 311(3), coupled with the principle in *Vivek Rai* (supra) must be resolved at the earliest. We have also come across similar predicament expressed in some other orders of the High Courts.

6. In view of the above, we refer the question relating to the interplay between Rule 311(3) of the Rajasthan High Court Rules, 1952 and the inherent power under Section 482 of the Code of Criminal Procedure, coupled with the correctness of the decision taken in the case of *Vivek Rai* (Supra), to a larger Bench.

7. The registry is directed to place our order along with the paper books before the Hon'ble Chief Justice of India for passing appropriate orders for constitution of the Bench.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]
.....J.
[ALOK ARADHE]

**NEW DELHI;
APRIL 10, 2026.**

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 19025-19027/2025

[Arising out of impugned final judgment and order dated 29-10-2025 in SBCRRP No. 1221/2025 29-10-2025 in SBCRRP No. 1260/2025 29-10-2025 in SBCRRP No. 1870/2025 passed by the High Court of Judicature for Rajasthan at Jaipur]

SUDHIR KHAITAN

Petitioner(s)

VERSUS

STATE OF RAJASTHAN & ORS.

Respondent(s)

IA No. 300041/2025 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 298046/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 298053/2025 - EXEMPTION FROM FILING O.T.

IA No. 300053/2025 - INTERVENTION/IMPLEADMENT

IA No. 298051/2025 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 10-04-2026 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE ALOK ARADHEFor Petitioner(s) : Mr. Atul Jha, Adv.
Ms. Shruti Jose, Adv.
Mr. Sandeep Kumar Jha, AORFor Respondent(s) : Ms. Aneesha Rastogi, Adv.
Ms. Nidhi Jaswal, AOR

Mr. Karan Khetani, Adv.
Ms. Sriharshitha Chada, Adv.
Mr. Niteen Kumar Sinha, AOR
Mr. Ram Avtar Sharma, Adv.

Mr. Anuj Bhandari, AOR
Ms. Jahanvi Bhardwaj, Adv.
Ms. Ishu Bhardwaj, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The matter is referred to a larger Bench in terms of the signed order. The operative portion of the order is reproduced hereunder :-

"6. In view of the above, we refer the question relating to the interplay between Rule 311(3) of the Rajasthan High Court Rules, 1952 and the inherent power under Section 482 of the Code of Criminal Procedure, coupled with the correctness of the decision taken in the case of Vivek Rai (Supra), to a larger Bench.

7. The registry is directed to place our order along with the paper books before the Hon'ble Chief Justice of India for passing appropriate orders for constitution of the Bench."

(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS

(NIDHI WASON)
ASSISTANT REGISTRAR

(Signed order is placed on the file)