CJ& SVSJ: **W.P.No.7338/2020**
10.07.2020

ORDER

We are now dealing with the three different issues. The first issue is whether the physical presence of the parties to a suit or proceedings in the civil Court is mandatory, when the Court records compromise in accordance with the Rule 3 of Order XXIII of the Code of Civil Procedure, 1908 (for short 'the said Code').

2. We have heard the learned Senior Counsel Shri. Uday Holla appointed as *Amicus Curiae,* the learned Additional Solicitor General of India and the learned Additional Advocate General of the State on the above issue.

3. The learned Senior Counsel Shri. Uday Holla has filed written submissions. The issue which we are now considering arises in view of the provisions of the Standard Operating Procedure (for short 'SOP') applicable to the District and Trial Courts in the State under which, the litigants are not permitted to enter the Court premises. It is a part of various measures taken to avoid spread of Novel Corona Virus (COVID 19). Whether, as a practice or by way of abundant precaution, many of the

Courts in the State have been insisting on personal presence of the parties to the proceedings, when the Courts consider a compromise in writing in accordance with the provisions of Rule 3 of Order XXIII of the said Code. The question is whether the presence of the parties is mandatory. For answering the said issue, it is necessary for this Court to look into various provisions of the said Code.

4. Firstly, we must refer to Rule 3 of Order XXIII of the said Code which reads thus:

> **"3. Compromise of suit**.—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by **any lawful agreement or compromise, in writing and signed by the parties** or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

> Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.
>
> *Explanation*. —An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule."
>
> (emphasis added)

5. By the Act No. 104 of 1976, the requirement of having a compromise in writing and signed by the parties has been introduced. On plain reading of Rule 3 of Order XXIII, it is clear that it is not mandatory for the parties to remain personally present in the Court when the Court considers an agreement in writing or a compromise in writing signed by the parties in accordance with the provisions of Rule 3 of Order XXIII. However, the Court has to be satisfied that the agreement or the compromise in writing filed by the parties is lawful. For that

purpose, the Court must satisfy itself that the agreement or compromise in writing has been signed by the parties to the suit.

6. In many cases, an issue arose whether the requirement introduced by the Act No. 104 of 1976 of the parties signing the compromise or agreement can be said to be substantially complied with if the Advocates who had duly filed vakalath on behalf of the parties concerned sign the documents of compromise for and on behalf of their clients. The aforesaid issue will have to be addressed in the light of the provision of Rule 1 of Order III of the said Code which reads thus:

"ORDER III

RECOGNIZED AGENTS AND PLEADERS

1. **Appearances, etc., may be in person, by recognised agent or by pleader**.— **Any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a**

pleaderappearing, applying or acting, as the case may be, on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person."

7. The act of signing a compromise petition or an agreement is also an act within the meaning of Rule 1 of Order III. A pleader appointed by the parties can apply or act on behalf of those parties. The question is whether the requirement of a compromise being signed by the parties can be said to be complied with when it is signed by the Advocates representing the parties to the suit.

8. The learned Senior Counsel Sri. Uday Holla relied upon the various decisions in this behalf. The first decision is in the case of ***Byram Pestonji Gariwala –vs- Union Bank of India and others***[1]. The appeal before the Apex Court arose out of a decision of the Bombay High Court in execution application on its original side. As can be seen from paragraph 2 of the said decision, the issue before the Apex Court was whether a decree made against the defendant in terms of a compromise in writing

[1](1992) 1 SCC 31

and signed by counsel representing the parties, but not signed by the parties themselves, was valid and binding on all the parties. The Apex Court thereafter proceeded to consider the provisions of Rule 3 of Order XXIII. The Apex Court also considered the issue relating to implied authority of an Advocate to sign compromise on behalf of his client. The Apex Court discussed several decisions on the point and ultimately, in paragraph 30 held thus:

> **"30. There is no reason to assume that the legislature intended to curtail the implied authority of counsel, engaged in the thick of proceedings in court, to compromise or agree on matters relating to the parties, even if such matters exceed the subject matter of the suit.** The relationship of counsel and his party or the recognised agent and his principal is a matter of contract; and with the freedom of contract generally, the legislature does not interfere except when warranted by public policy, and the legislative intent is expressly made manifest. There is no such declaration of policy or indication of intent in the present case. The legislature has not evinced any intention to change the well recognised and universally acclaimed common law tradition of an ever alert, independent and active bar with freedom

> to manoeuvre with force and drive for quick action in a battle of wits typical of the adversarial system of oral hearing which is in sharp contrast to the inquisitorial traditions of the 'civil law' of France and other European and Latin American countries where written submissions have the pride of place and oral arguments are considered relatively insignificant. (See Rene David, *English Law and French Law* — Tagore Law Lectures, 1980). 'The civil law' is indeed equally efficacious and even older, but it is the product of a different tradition, culture and language; and there is no indication, whatever, that Parliament was addressing itself to the task of assimilating or incorporating the rules and practices of that system into our own system of judicial administration".
>
> (emphasis added)

In paragraph 35, the Apex Court further held thus:

> **"35. So long as the system of judicial administration in India continues unaltered, and so long as Parliament has not evinced an intention to change its basic character, there is no reason to assume that Parliament has, though not expressly, but impliedly reduced counsel's role or capacity to represent his client as effectively as in the past. On a matter of such**

> **vital importance, it is most unlikely that Parliament would have resorted to implied legislative alteration of counsel's capacity or status or effectiveness.** In this respect, the words of Lord Atkin in *Sourendra* [57 IA 133 : AIR 1930 PC 158 : 32 Bom LR 645] comparing the Indian advocate with the advocate in England, Scotland and Ireland, are significant: (AIR p. 161)
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> > "There are no local conditions which make it less desirable for the client to have the full benefit of an advocate's experience and judgment. One reason, indeed, for refusing to imply such a power would be a lack of confidence in the integrity or judgment of the Indian advocate. No such considerations have been or indeed could be advanced, and their Lordships mention them but to dismiss them."
> >
> > (emphasis added)

Even in paragraphs 38 and 39 of the decision are relevant which read thus:

> **"38.** Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and

allowing the compromise decree to comprehend even matters falling outside the subject matter of the suit, but relating to the parties, **the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in court by elimination of uncertainties and enlargement of the scope of compromise.**

39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated".

(emphasis added)

9. The second decision on the same point is in the case of ***Pushpa Devi Bhagat (dead) through LR Sadhana Rai –vs- Rajinder Singh and others[2].*** In paragraph 23 of the said decision, the Apex Court discussed the meaning of the words "signed by the parties". The Apex Court relied upon its earlier decisions in the case of ***Byram Pestonji Gariwala*** (supra) as well as ***Jineshwardas –vs- Jagrani[3].*** The conclusion drawn by the Apex Court is that the words 'by parties" refer not only to parties-in-person, but also duly authorized pleaders. Thus, the Apex Court held that if Advocates appointed by the parties have been authorized by the parties to sign the compromise, the compromise memo/petition signed by the Advocates becomes a compromise "signed by the parties".

10. In the case of ***Y. Sleebachen and others –vs- State of Tamil Nadu[4],*** the Apex Courts specifically dealt with the issue of the power of an Advocate to enter into compromise. After considering its earlier decisions, in paragraph 20, the Apex Court held thus:

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[2](2006) 5 SCC 566
[3](2003) 11 SCC 372
[4](2015) 5 SCC 747

> **"20.** We find that in the present case the Government Pleader was legally entitled to enter into a compromise with the appellant and his written endorsement on the memo filed by the appellant can be deemed as a valid consent of the respondent itself. **Hence the counsel appearing for a party is fully competent to put his signature to the terms of any compromise upon which a decree can be passed in proper compliance with the provisions of Order 23 Rule 3 and such decree is perfectly valid.** The authority of a counsel to act on behalf of a party is expressly given in Order 3 Rule 1 of the Civil Procedure Code which is extracted hereunder……"
>
> (emphasis added)

Hence, the Apex Court has reiterated that an Advocate appearing for a party is fully competent to put his signature on the terms of any compromise on behalf of his client.

11. In the case of ***Deputy General Manager –vs- Kamappa[5],*** a division Bench of this Court had dealt with the issue of validity of compromise on the ground that the compromise petition was not signed by the appellant. In paragraph 5, the Division Bench referred to the form of Vakalath which specifically authorized the Advocate to enter into compromise and therefore, held that there

[5]ILR 1993 KAR 584

was nothing wrong with the compromise memo or petition signed by the Advocates and that the same are lawful.

12. The conclusion which can be drawn from the aforesaid discussion is that the Advocates representing the parties have authority to sign the compromise petition on behalf of their clients and when the compromise petition is signed by the Advocates representing a parties to the suit, it complies with the statutory requirement in the provision of Rule 3 of Order XXIII of the said Code which requires a compromise petition to be signed by the parties. Thus, a compromise petition signed by Advocates on behalf of their respective clients will have to be treated as a compromise petition signed by the parties. That is very clear from sub-rule 1 of Order III. Any appearance, application or act in or to any Court required to be made or done by a party can be made done by a pleader representing the said party. Under Rule 4 of Order III, it is provided that a pleader can act for any person in any Court, if he has been appointed for the purpose by such person by a document in writing signed by such person or his recognized agent or by his power of attorney holder. This appointment in writing is known as vakalath or vakalathnama. The authority and appointment of the Advocate

continues to be in force until determined with the leave of the Court by a writing signed by the client or the Advocate, as the case may be, or until the client or Advocate dies. Unlike some other States, in the State of Karnataka, there are no rules framed under Section 34(1) of the Advocates Act,1961 prescribing a form of vakalath. If the vakalath contains a clause authorizing the Advocate to sign compromise, the Advocate has authority to sign a compromise on behalf of his client. If vakalath does not contain such express authority, the client can always give such authority in writing to his Advocate.

13. Thus, the law as it stands today is that an Advocate who is duly authorized by his client to enter into a compromise by signing the compromise petition or consent terms can sign the same for and on behalf of his client and it will be a perfectly valid compromise in accordance with the Rule 3 of Order XXIII of the said Code provided it is otherwise lawful. The authority can be in the form of a specific clause in vakalath or a specific authority in writing, signed by the client. A compromise petition and/or consent terms duly signed by the Advocates representing the parties to the suit are valid in terms of Rule 3 of Order XXIII and it can be termed as a compromise signed by the parties.

Therefore, it follows that when a compromise petition is signed by the parties to the suit who are represented by the Advocates, the personal presence of the parties for enabling the Court to pass an order disposing of the suit in terms of compromise is not mandatory if they are represented by the Advocates before the Court. If the Advocate has authority to sign the compromise on behalf of his client, surely he has authority to present the compromise signed by his client to the court and represent him when the Court passes an order in terms of the compromise. However, on plain reading of Rule 3 of Order XXIII, the Court must be satisfied that there is a lawful agreement or compromise between the parties and that the compromise is signed either by the parties or by their recognized agents or by power of attorney holders or by the Advocates who are duly authorized to enter into compromise.

14. It is pointed out across the Bar that there are several instances where, the compromise filed in civil suits or in appeals is challenged by the parties on the ground that a fraud has been played or that their signatures were obtained on the compromise petition without explaining the contents thereof. We are discussing the question whether, in law, personal presence of

the parties to the suit is mandatory when the consent terms/compromise petition signed by them and/or their respective Advocates is tendered by the Advocates before the Court to enable the Court to make enquiry and dispose of the suit in terms of the compromise. The answer to this legal question is clearly in the negative, in view of the law which is fairly well settled. The settled legal position cannot undergo a change merely because, there is a possibility of unscrupulous litigants abusing the same.

15. In a case where the compromise petition is signed by a party or by his Advocate and if the party concerned is not present before the Court, if a Court entertains a doubt about the genuineness of the settlement, the Court can always exercise its power under the proviso to Rule 1 of Order III and direct the parties to appear before the Court in person even through video conferencing. But the Court cannot insist on the personal appearance of the parties in every case.

16. In some of the cases, even though the parties physically appear before the Court and accept and acknowledge the compromise, the parties back out and make frivolous allegations

of fraud. However, that will not change the legal position and it does not make it mandatory for the parties to remain present in the Court at the time of presenting the compromise petition. However, with a view to avoid any allegations being made by the parties against their Advocates, it may be advisable for the Advocates to get the affidavits of the parties in support of compromise petition recording that the party has understood the contents of the compromise petition and that the party has voluntarily affixed/put his/or signature on the compromise petition. If an Advocate signs the compromise petition on behalf of his client, though he may be duly authorized under vakalath to enter into compromise, it is advisable that a special authority in writing is taken from the client to sign the compromise petition and placed on record along with the compromise.

17. There is no legal impediment in the way of Courts acting upon the compromise petition duly signed by the parties which is presented by their respective Advocates, though the parties are not personally present. The Court may call upon the Advocates presenting the compromise petition to identify and attest the signatures of their respective clients on the compromise petition. Apart from that, the Court may also call upon the Advocates to

file affidavits in support of the compromise petition duly affirmed by the parties to the suit. If the Court is satisfied that the compromise is signed by the parties or their Advocates duly authorized to sign and that the compromise is lawful, the Court has a power to pass a decree in terms of the compromise in the suit without insisting on the personal presence of the parties to the suit. As observed earlier, in a case where the Court entertains any serious doubt, it can always call upon the parties to remain present before the Court. The personal presence of the parties can be secured even through video conferencing. When the presence of the parties is procured by video conferencing, their Advocates who are present before the Court can identify the parties appearing through the video conferencing.

18. Subject to what is observed above, it is made clear that it is perfectly lawful for the Courts to record the compromise on the basis of the compromise petitions duly signed by the parties and tendered by their respective Advocates before the Court, even without procuring the personal presence of the parties.

19. The second issue is about conduct of the proceedings of the petitions filed under Section 13B of the Hindu Marriage Act, 1955 (for short, 'the said Act of 1955') and Section 28 of the Special Marriage Act, 1954 (for short, 'the said Act of 1954'). As far as the requirement of personal/physical presence of the petitioner for filing of the petition is concerned, the said issue is already resolved by an order of this Court. In the case of ***Sanathini –vs- Vijaya Venkatesh***[6] a Bench of three Hon'ble Judges of the Apex Court has dealt with the issue of maintaining and safeguarding confidentiality in video conferencing proceedings before the Family Courts established under the Family Courts Act 1984 (for short, 'the said Act of 1984'). The majority decision was rendered by Dipak Misra, C.J (as he then was). The Apex Court, after considering the various stages of the proceedings of the matrimonial disputes in light of the provisions of Section 11 of the said Act of 1984 which requires proceedings to be held *in camera* in event one of the parties desires so, held that the method of video conferencing hearing cannot be adopted when only one party gives his consent to conduct the conciliation proceedings to bring about a settlement

[6](2018) 1 SCC 1

between the parties by video conferencing. The Apex Court observed that if such proceedings are ordered to be conducted through video conferencing, the command under Section 11 as well as the spirit of the 1984 Act will be in peril and cause of justice would be defeated. However, in paragraph 56 of the said decision, the Apex Court observed thus:

> **"56.** We have already discussed at length with regard to the complexity and the sensitive nature of the controversies. The statement of law made in *Krishna Veni NagamKrishna Veni Nagam* v. *Harish Nagam*, (2017) 4 SCC 150 : (2017) 2 SCC (Civ) 394 that if either of the parties gives consent, the case can be transferred, is absolutely unacceptable. However, an exception can be carved out to the same. We may repeat at the cost of repetition that though the principle does not flow from statutory silence, yet as we find from the scheme of the Act, the Family Court has been given ample power to modulate its procedure. The Evidence Act is not strictly applicable. Affidavits of formal witnesses are acceptable. It will be permissible for the other party to cross-examine the deponent. We are absolutely conscious that the enactment gives emphasis on speedy settlement. As has been held in *Bhuwan Mohan Singh Bhuwan*

Mohan Singh v. *Meena*, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200 , the concept of speedy settlement does not allow room for lingering the proceedings. A genuine endeavour has to be made by the Family Court Judge, but in the name of efforts to bring in a settlement or to arrive at a solution of the lis, the Family Court should not be chained by the tentacles by either parties. Perhaps, one of the parties may be interested in procrastinating the litigation. Therefore, we are disposed to think that once a settlement fails and if both the parties give consent, that a witness can be examined in videoconferencing that can be allowed. That apart, when they give consent that it is necessary in a specific factual matrix having regard to the convenience of the parties, the Family Court may allow the prayer for videoconferencing. That much of discretion, we are inclined to think can be conferred on the Family Court. Such a limited discretion will not run counter to the legislative intention that permeates the 1984 Act. However, we would like to add a safeguard. A joint application should be filed before the Family Court Judge, who shall take a decision. However, we make it clear that in a transfer petition, no direction can be issued for videoconferencing. We reiterate that the discretion has to rest with the Family Court

> to be exercised after the court arrives at a definite conclusion that the settlement is not possible and both parties file a joint application or each party filing his/her consent memorandum seeking hearing by videoconferencing".

20. The Apex Court observed that once the settlement or reconciliation fails, if both the parties give consent by filing a consent memorandum for hearing of the case through video conferencing and for examination of a witness by video conferencing, the Family Court can take recourse to videoconferencing. Under sub-section (2) of Section 13B of the said Act of 1955 and sub-section (2) of Section 28 of the said Act of 1954, a decree of divorce by mutual consent can be passed on the Court being satisfied, after hearing the parties and after making such an enquiry as it thinks fit. For arriving at the decision as contemplated under sub-section (2) of both the sections, the Court must be satisfied that the marriage between the parties has been solemnized, and the averments made in the petition are true and all other ingredients of Section 13B of the said Act of 1955 or Section 28 of the said Act of 1954, as the case may, be are satisfied. For arriving at the decision, if the

Court wants to record the evidence on oath of parties to the consent petition, there is no prohibition on recording the evidence of the parties *via* video conferencing. Even the Court can take the affidavits of the parties in a given case and record its decision on the basis of the same. The Court can act upon the affidavits of the parties or can record oral evidence by video conferencing especially when after statutory period as provided in Section 13B or Section 28, as the case may be, is over and when both the parties are willing to standby the prayers for grant of divorce by mutual consent. As far as the procedure for recording of evidence is concerned, the Family Courts can always follow the provisions of the Rules framed by the High Court for videoconferencing hearing. Even the identity of the parties deposing by video conferencing can be established in the manner laid down in the said Video Conferencing Hearing Rules framed by the High Court.

21. The next issue we are considering is about the acceptance of sureties in compliance with the condition in the orders of the Criminal Courts, enlarging the accused on bail. Our attention is invited to an order made by the learned Single Judge laying down the guidelines for acceptance of surety in the

present times which are affected by the pandemic of COVID-19. As far as the procedure governing the acceptance of surety is concerned, we have heard the learned Senior Counsel Shri. C.V. Nagesh. We have considered the order dated 15th May, 2020 passed by the learned Single Judge in Crl.P.No.2039/2020. The relevant part of the said order is at paragraphs 3 and 4 which read thus:

> "3. Under the above said circumstances, all the transactions have been done by e-filing and through video conferencing method. Hence, it is clarified that the Court should not insist personal presence of accused or his surety for the purpose of executing any bond or affidavit. The trial Courts are hereby directed to accept the affidavits, photographs and necessary documents regarding their identification and property of the surety and bonds in Form No.28 of Cr.P.C submitted by the respective Counsel with the signature of the Counsel filed through e-filing to the Court or in any other electronic media. However the acceptance of those papers by the Court is subject to verification after the lockdown is completely lifted and the Courts start regularly working. If the Court finds any deficiency in the papers and irregularity, the same can be rectified later. Even if the Court

feels it just and necessary the Court can insist for fresh surety later.

4. Advocates are also hereby directed to furnish surety affidavit, photograph of surety, necessary documents for identification of surety, and documents pertaining to the property of surety, along with surety bond in Form No.28 of Cr.P.C, duly signed by the surety and identified by the counsel by the by the counsel and scanned, through e-filing, or e-mail to the concerned Court so as to enable the concerned Courts to pass appropriate orders."

22. The learned Senior Counsel Shri. C.V. Nagesh has invited our attention to various provisions of the Criminal Procedure Code, 1973 (for short, 'the Cr.P.C') and the form of Surety Bond (Form No.45) in the second Schedule of the Cr.P.C. He submitted that the presence of the surety is required before the Court for the purposes of verifying his identity and genuineness of the information provided in the surety bond and in the security documents. He submitted that if such bond along with the supporting documents is executed in the form of an affidavit, the said form would gain the legal sanctity of genuineness and any iota of falsity in the said documents would certainly attract the

wrath of the penal statutes. He submitted that if any enquiry is required to be made by procuring the presence of the surety, the same can be done by procuring the presence of the surety via videoconferencing.

23. We have heard the learned Additional Advocate General on the said issue who urged that several safeguards will have to be incorporated in addition to the safeguards provided in the order of the learned Single Judge dated 15th May, 2020, inasmuch as, in many cases it is found that the documents produced by the surety are fake and fabricated and there are instances of impersonation.

24. It is, therefore, necessary to refer to the relevant provisions of Cr.P.C on this aspect. Section 441 and 441-A of the Cr.P.C are the relevant provisions which read thus:

> **"441. Bond of accused and sureties**.—(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person

shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

441-A. Declaration by sureties. —Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he

has stood surety including the accused, giving therein all the relevant particulars."

25. There are orders passed by the Criminal Courts granting bail subject to condition accused executing his personal bond for a specified sum with one or two sureties for the like sum to the satisfaction of the jurisdictional Court. The bail bond to be executed by the accused and by the surety is in terms of Form No.45 of Schedule-II of Cr.P.C. Section 446 of Cr.P.C provides for forfeiture of bond. As directed by the learned Single Judge, before the jurisdictional Court, the Advocate representing the accused can produce the bail bond signed by the surety in prescribed form along with an affidavit of the surety. Along with the bond and affidavit, true copies of the authentic documents of identity such as PAN, Aadhar etc., and documents of address proof as well as the documents showing the property details held by him shall also be produced. The documents shall be self-attested by the surety and his signature shall be identified by the Advocate for the accused. The Advocate will have identify the signature of the surety by signing below the signature of the surety and the concerned Advocate shall mention his registration/enrolment number issued by the Karnataka Bar

Council below his signature. A recent photograph of the surety shall be affixed on the affidavit and the bond. The affidavit shall bear the signature of the Advocate for the accused recording that he identifies the surety. In a given case, the jurisdictional Court can call upon the Advocate to produce the original documents of which the self-attested copies are furnished for the purposes of verification. The jurisdictional Magistrate may himself verify the documents or get the documents verified by the Court officials. The affidavit of the surety must contain a statement on oath regarding the description of the property possessed by him, its value etc. A statement recording the correctness of the documents produced along with the affidavit must be incorporated in the affidavit. There shall be a statement in the affidavit to the effect that the person executing the affidavit has signed the surety bond.

26. After the aforesaid formalities are completed, the jurisdictional Court may make an enquiry as contemplated by sub-section (4) of Section 441 and will decide whether the surety is fit and/or sufficient. For holding enquiry as contemplated in sub-section (4) of Section 441 of Cr.P.C, personal/physical presence of the surety is not mandatory.

However, if the Court entertains any serious doubt about the identity of the surety or the genuineness of the documents produced along with the bond and affidavit, the Court can procure the attendance of the surety by video conferencing. The identity of the surety can be verified as laid down in the Video Conference Hearing Rules framed by this Court. It is only after satisfaction is recorded after holding an enquiry as contemplated by sub-section (4) of Section 441 that the person in whose favour bail is granted can be released in accordance with Section 442 of Cr.P.C. The accused can be released on bail only after the Court holds an enquiry under sub-section (4) of Section 441 of Cr.P.C and accepts the surety. Before passing an order after holding enquiry under sub-section (4) of Section 441, the Court must ensure that a declaration on oath in accordance with Section 441-A is furnished by the surety. We must note here that, as far as possible, no Court shall direct the personal/physical presence of the surety before it. As repeatedly held by us, it is the duty and responsibility of every Court and all the stakeholders to ensure that the functioning of Court does not become source of spread of Novel Corona Virus (COVID-19).

Thus, during the present period of pandemic of COVID-19, when there is an embargo on entry of litigants and the other persons other than the Advocates to the Court complexes, the procedure, as indicated above can be followed for the acceptance of sureties.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Vr