

The Legal Aid to Unrepresented Accused Person In Cases Before the Court of Sessions Rules, 1982

No. P. 1630/57 – In exercise of the powers conferred by sub-section (2) of Section 304 of the Code of Criminal Procedure, 1973 (II of 1974) and with the previous approval of the Government of Maharashtra the Honourable Chief Justice and Judges of the High Court of Judicature at Bombay are pleased to make the following Rules:-

- 1. Short title and commencement.** – (1) These rules may be called "the Legal Aid to unrepresented accused person in cases before the Court of Sessions Rules, 1982)".
- 2) These rules shall come into force with effect from 27th October. 1982.
- 2. Definitions.** – In these rules, unless the context otherwise requires.—
 - a) "Court" means Court of Sessions established under the Code of Criminal Procedure, 1973 (II of 1974);
 - b) "Indigent person" means a person who in the opinion of the Court has no means to engage a Legal Practitioner of his own for the defence of his Sessions case or appeal before the Court of Sessions;
 - c) "Legal Aid" means legal aid given to an unrepresented accused person in all or any of the following modes, namely:
 - i) Payment of Court fees, process fees, expenses of witnesses and all other charges payable or incurred in connection with any proceeding before the Sessions Court;
 - ii) representation by a Legal Practitioner in proceedings before the Sessions Court;
 - iii) supply of certified copies of judgments, orders, notes of evidence and other documents in proceedings before the Sessions court;
 - iv) drafting of legal documents;
 - (d) "unrepresented accused person" means an indigent person who in the opinion of the Court has no means to engage a Legal Practitioner of his own for the conduct of his case before a Sessions Court.

Explanation.—A person whose gross income from all sources does not exceed Rs. 5,000 per annum or such amount as Government may prescribe from time to time shall ordinarily be considered to be a person who has no means to engage a Legal Practitioner.

- 3. Availability of Legal Aid.** – The Legal Aid shall be given to –
 - a) every unrepresented accused person entitled to such aid in a case before a Sessions Court;
 - b) a person who is in incommunicado condition or to an indigent person entitled to recover

- maintenance allowance under Section 125 of Code of Criminal Procedure, 1973 (II of 1974);
- c) an indigent person who desires to defend a proceeding before the Sessions Court;

Provided that, no Legal Aid under these rules shall be given in cases involving economic offences or offences against social laws such as the Protection of Civil Rights Act, 1955, the Suppression of Immoral Traffic in Women and Girls Act, 1956 or child abuse.

4. Duty of the Court. –

- 1) The Presiding Officer of the Court shall explain to every unrepresented accused person, the provisions of the Rules of Legal Aid as soon as he is produced before him for the first time and shall certify under his signature the fact of having done so in the record of the case to that effect. After explaining to such unrepresented accused person the provisions of the Rules if the said unrepresented accused person states that his income does not exceed Rs. 5,000 per annum, he shall be asked if he desires to submit an application in the Form specified in the Schedule appended to these Rules.
- 2) The Presiding Officer shall ascertain whether the unrepresented accused person is desirous of availing of free legal assistance.
- 3) No unrepresented person shall be compelled to avail of free legal assistance against his wish.
- 4) The Presiding Officer of the Court shall, at the time of awarding sentence of imprisonment or imprisonment in default of payment of fine acquaint the convict of his right of appeal and the right to get the Legal Aid for preferring an appeal.

5. Authority to decide capacity of person to engage a Legal Practitioner. –

- 1) Every Presiding Officer of the Court is authorised to certify or report whether the person applying for Legal Aid is not able to engage a Legal Practitioner at his own cost.
- 2) Every application for Legal Aid shall be made to the Court before which the proceeding is to be instituted or pending, as the case may be, and shall be in the Form specified in the Schedule appended to these Rules. No court fee shall be payable on such application.

6. Panel of Legal Practitioners for Legal Aid. –

- a) The appointment of a Legal Practitioner for the unrepresented accused person under these Rules shall be made from a panel of Legal Practitioners constituted for each Court by the Presiding Officer of the Court in consultation with the President and the office bearers of the Bar Association, if any. Where there is no Bar Association, the Presiding Officer shall draw up the panel in consultation with the Senior Advocates of the concerned Bar. The Panel may include the President of the Bar Association, senior Advocates of the Bar and the junior members of the Bar having a standing of at least five years as practising lawyer. In every case, where an offence is punishable with sentence of death or imprisonment for 7 years or more a Senior Advocate with a Junior Advocate from the panel shall be appointed for defending the unrepresented accused. As far as possible, the Presiding Officer shall not make an appointment from outside the panel but he may do so for any exceptional reason to be recorded in writing.

- b) Notwithstanding anything to the contrary, in a case pending on the date of commencement of these Rules against an unrepresented accused person an application in that behalf to the Court by the Legal Practitioner engaged by him shall be deemed to be the Legal Practitioner appointed by the Court under these Rules and shall be paid fees admissible under these Rules.

7. Constitution of Panel of Legal Practitioners. –

- 1) The panel shall be constituted normally for every two years from the 1st day of January onwards or according to the convenience of the Presiding Officer of the Court:

Provided that, a Legal Practitioner shall continue in a case, for which he is appointed still its completion if the case is not closed in that year.

- 2) Every person included in the panel shall express in writing to the Presiding officer of the Court his willingness to serve on the panel and thereupon such person shall accept appointment in any case and appear in Court when so appended.
- 3) Any person in the panel may tender his resignation in writing to the authority constituting the panel.
- 4) Any vacancy in the panel caused by resignation or otherwise may be filled up by the Presiding Officer of the Court from the Legal Practitioners practising in the Sessions Court but the terms of the person so appointed will expire on the date of coinciding with the period for which the said panel is constituted.
- 5) If any Advocate after having agreed to serve on a panel neglects or refuses to accept an appointment, he shall forthwith cease to be a member of the panel and shall be debarred from being reappointed on the panel. If an Advocate refuses or neglects an appointment his name shall be reported by the Presiding Officer of the Court to the Bar Council of Maharashtra.
- 6) If any Legal Practitioner after accepting an appointment, neglects or refuses to discharge his duties properly, the authority which sanctioned the appointment shall remove the Legal Practitioner and appoint another in his place. Such removal will entail the consequences mentioned in sub-rule (5).
- 7) Any person serving on a panel shall be eligible for reappointment.
- 8) Cases in which Legal Aid is sanctioned, as far as may be distributed among the members of the panel equitably.

8. Cancellation of Legal Aid. – The Court may either on its own motion or otherwise cancel the Legal Aid granted to an unrepresented person in the following circumstances, namely:-

- a) If the Legal Aid was obtained by misrepresentation or fraud;
- b) If the aided person does not co-operate with the Legal Practitioner assigned by the Court;

- c) If the aided person engages a Legal Practitioner other than the one assigned by the Court.

9. Facilities to the Legal Practitioner. – The Presiding Officer of the Court shall provide the Legal Practitioner or Practitioners appointed on behalf of the unrepresented accused person such facilities as would be necessary for the conduct of the case such as holding interviews, tendering advice and supplying certified copies of judgments, orders, notes or evidence and other documents free of charges.

10. Fees payable to Legal Practitioners on the Panel. –

- 1) The Senior Legal practitioners appearing for the unrepresented accused shall work as *amicus curiae* and shall not be entitled to any fees.
- 2) The Junior Legal Practitioner appearing for unrepresented accused shall be paid the following fees:-

In a Sessions Case or appeal before the City Civil and Sessions Court at Bombay:-

- a) The Legal Practitioner on the panel shall be paid Rs. 75 per day of effective hearing subject to a maximum of Rs. 450 in any one case;]
- b) In a Sessions case or appeal before any other Sessions Court, the fees shall be Rs. 50 per day of effective hearing subject to a maximum of Rs. 300 in any case;
- c) In cases where the Senior Legal Practitioner certifies that the Junior Legal practitioner assisting him in the case deserves enhanced fees, on account of the number of days involved, special labour put in and the marked industry and ability displayed by him, the Junior Legal Practitioner shall be entitled to such enhanced fees as the Remembrancer of Legal Affairs may sanction on the recommendation of the Court.

11. Recovery of Fees. – In case of cancellation of Legal Aid on the ground of misrepresentation or fraud, fees paid to the legal Practitioner shall at the discretion of the Court be recovered from the person to whom the aid is given as arrears of Land Revenue.

12. Disbursement of Fees (in the courts in the Mofussil). –

- 1) Every bill of fees and other expenses incurred shall be submitted by the pleader appointed in the case for the counter-signature of the Chairman of the District Legal Aid and Advice Committee through the Member-Secretary of the District Legal and Advice Committee.
- 2) Whenever the Presiding Officer of the concerned court appoints a pleader, the bill of fees of such pleader should be prepared by the office of such Presiding Officer and forwarded alongwith all the necessary documents to the Member-Secretary of the concerned District Legal Aid and Advice Committee.
- 3) The bill shall be accompanied by the order authorising such pleader to appear in the case, together with necessary certificate from the Court concerned as prescribed in Rule 13.
- 4) The Member-Secretary of the concerned District Legal Aid Committee should fill in the appropriate columns in the bill and obtain the countersignature of the Chairman who is the

District and Sessions Judge of the concerned District and process the bill and arrange to make the payment to the concerned pleader, provided that the Chairman is satisfied that the bill is in order.

- 5) The expenditure on the payment of fees be met from the funds placed at the disposal of the Committees by the Board annually.
- 6) The amount of every such Bill shall be debited to the provision made for the purposes so far as pleaders in mofussil are concerned under the budget head "214 – Administration of Justice-in-Legal Advisors and Counsel-m (iii) Legal Aid and Advice Board (4) Payment for professional and special services."
- 7) The concerned Committee should maintain necessary registers, records, etc, properly and produce the same to the audit as and when required.

12. (a) Disbursement of Fees (In the Courts in Greater Bombay). –

- 1) Every Bill of fees and other expenses incurred shall be submitted by the pleader appointed in the case for the counter-signature of the Chairman of the City Civil and Sessions Court Legal Aid Committee through the Secretary of the City Civil and Sessions Court Legal Aid Committee.
- 2) Whenever the Judge in the City Civil and Sessions Court appoints pleader, the bill of such pleader should be prepared by the office of the City Civil and Sessions Court and, forwarded alongwith the necessary documents to the Secretary, City Civil and Sessions Court Legal Aid Committee.
- 3) The bill shall be accompanied by the order authorising such pleader to appear in the case, together with necessary certificate from the Court concerned as prescribed in Rule 13.
- 4) The Secretary of the City Civil and Sessions Court Legal Aid Committee should fill in the appropriate columns in the Bill and obtain counter-signature of the Chairman of the City Civil and Sessions Court Legal Aid Committee and process the bill and arrange to make payment to the pleader, provided that the Chairman is satisfied that the bill is in order.
- 5) The expenditure on the payment of fees be met from the funds placed at the disposal of the Committees by the board annually.
- 6) The amount of every such bill shall be debited to the provision made for the purposes so far as pleaders in Greater Bombay are concerned, under the budget head "214 Administration of Justice-in-Legal Advisors and Counsel-m (iii) Legal Aid and Advice Board (4) payment for professional and special service.
- 7) The concerned Committee should maintain necessary registers, records etc. properly and produce the same to the audit as and when required.

13. Certificate. – The certificate to be submitted to the Court shall contain the following details:-

- a) the number of days on which actual work is done;
- b) the duration of work for each day;

- c) statement that the Legal Practitioner has not received any fee from the unrepresented accused person or from any other source;
- d) the fee payable to him as per these rules.

14. Legal Practitioner not to receive any fee from party. – The Legal Practitioner to whom fee is due or paid under these Rules shall not be entitled to, nor shall be receive, any fee from the party or from any other source.

15. Saving. – Notwithstanding anything contained in these Rules it shall be competent for the Government to issue from time to time any direction or instruction with a view to implementing the scheme for Legal Aid to the unrepresented accused person having regard to the special circumstances of any case.

SCHEDULE

(See Rules 4 and 5)

1. Name of the Court
2. No. of Sessions Case/Appeal
3. Name, description and place of residence of the applicant.
4. Average monthly income of the applicant from all sources.

I/We am/are in in No noted above, My/Our average monthly income from all sources is Rs I/We am/are not in a position to engage a Legal Practitioner of my/our own in the above

I/We, therefore, pray that the Court may be pleased to appoint a Legal Practitioner for me/us in the above

The above statements are true to the best of my personal knowledge and belief.

Signature of applicant/s

Forwarded to for enquiry and report before

Presiding Officer
