

Rules Regarding Legal Aid to Unrepresented Accused Person in cases other than those before the Court of Sessions

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 the Chief Justice and Judges of the High Court of Judicature at Bombay are pleased to make the following rules namely:-

1. Short title and commencement. –

- 1) These Rules may be called the Legal Aid to Unrepresented Accused Person in Criminal Cases other than those before the Court of Sessions Rules, 1982.
- 2) These rules shall come into force with effect from 27th October, 1982.

2. Definitions. –

- a) "Court" means a Criminal Court other than a Court of Sessions establishing under the Code of Criminal Procedure, 1973 (II of 1974) or Court exercising criminal jurisdiction under any law for the time being in force;
- 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 criminal case;
- c) "Legal Aid" means Legal Aid given to unrepresented 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 criminal proceedings;
 - ii) representation by a legal practitioner in criminal proceedings;
 - iii) supply of certified copies of judgments, orders, notes of evidence and other documents in criminal proceedings;
 - iv) drafting of legal documents;
- d) "unrepresented accused person" means an indigent accused person who is not represented by a pleader and 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 Court.

Explanation.—A person whose gross annual income from all sources does not exceed Rs. 5,000 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 Criminal Court;
- b) a person who is in incommunicado condition or an indigent person entitled to recover

maintenance allowance under Section 125 of the Code of Criminal Procedure, 1973 (II of 1974).

- c) an indigent person who desires to defend a criminal proceedings;

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 will.
- 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 to get the Legal Aid for preferring an appeal.

5. Authority to decide capacity of person to engage 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. 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 at least a standing of three years as practising lawyer. In every case where an offence is punishable with a sentence of imprisonment for two 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, on application in that behalf to the Court, 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 or 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 and a copy thereof will be sent to the District and Sessions Judge by him.

Provided that, a Legal Practitioner shall continue in a case, for which he is appointed till 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 appointed.
- 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 Court but the term of the persons so appointed will expire on the date 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 consequence 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 Practitioners. – The Presiding Officer of the Court shall provide the Legal Practitioner or practitioners engaged 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 of evidence and other documents free of charge.

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 the unrepresented accused shall be paid the following fees:-
 - a) in all legal proceedings in Courts at the headquarters of the Districts and in the Courts of Metropolitan Magistrate in Greater Bombay, Rs. 50 per day of effective hearing, subject to a maximum of Rs. 300 in any one case;
 - b) in all legal proceedings in Courts in Taluka places other than Greater Bombay and Taluka having headquarters at District places. Rs. 25 per day of effective hearing, subject to a maximum of Rs. 200 in any one 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 may be paid 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 or 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. –

- 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 Member secretary of the Maharashtra State Legal Aid and Advice Board through the Court appointing him.
- 2) The Bill shall be accompanied by the order authorising such pleader to appear in the case, together with certificate from the Court concerned as prescribed in Rule 13.
- 3) If the Member-Secretary of the Board is satisfied that the Bill is in order he shall countersign it and return it to the pleader concerned, who shall then present it at the treasury for payment.
- 4) The amount of every such Bill shall be debited to the provision made for the purpose so far as pleaders in Greater Bombay and in mofussil are concerned under the budget head "214-Administration of Justice-m-Legal advisers and Counsels-m (iii) Legal Aid and Advice Board—(4) Payment for Professional and Special Services".

- 13. Certificate.** – The Certificate to be submitted to the Court shall contain the following details:
- a) the number of days on which the actual work is done;
 - b) the duration of work for each day;
 - c) statement that the Legal Practitioner has not received any fees from the unrepresented accused person or from any other sources;
- 14. Legal Practitioners 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 he 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 schemes for legal aid to unrepresented accused person having regard to the special circumstances of any case.

SCHEDULE

(See Rules 4 and 5)

FORM OF APPLICATION FOR LEGAL AID

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

I/We am/are the 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
