

CRM-M-36653-2015 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-36653-2015 (O&M).
Decided on: October 28, 2015.**

Ashish Garg

..... Petitioner(s)

Versus

Chetan Garg

..... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Rajinder Goyal, Advocate,
for the petitioner.**

M.M.S. BEDI, J (ORAL).

The petitioner is one of the five summoned accused facing trial in a private complaint of assault and trespass. His bail bonds have been cancelled vide order dated 10.3.2015 on account of his non-appearance on said date while all the other accused were present as is apparent from the record as the petitioner had moved an application dated 12.11.2014, Annexure P6, in advance informing the Court that he had to go to USA. The Court appears to have not decided the said application dated 12.11.2014 by 10.3.2015. His bail bonds and surety bonds having been cancelled, the petitioner was compelled to file a revision petition against the order dated 10.3.2015 which has also been casually dismissed by the revisional Court causing unnecessary harassment. It has not only caused unnecessary delay in the proceedings in the criminal complaint but

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has compelled the petitioner to incur unnecessary expenditure on the litigation. In this case, if notice is issued to the complainant, the complainant will also be compelled to appear before this Court by incurring unnecessary expenditure. The trial Court in the present case should have assessed as to what loss was being caused on the date of hearing when the exemption was sought for as there were four other accused present in the Court along with their counsel. In case it was fixed for evidence the Court could have easily exempted the personal appearance of the petitioner on the basis of his application dated 12.11.2014 and proceeded with the case by adhering to the provisions of Section 273 Cr.P.C. which permit a Court to exempt the personal appearance of accused and to record the evidence in presence of his counsel.

On asking of the Court, counsel for the petitioner informs that the petitioner is back from USA and is ready to join the stream of litigation and appear before the Court to face the trial in the assault case. The trial Court in this case had power to postpone or adjourn the proceedings exercising powers under Section 309 Cr.P.C. In case, it felt that some prejudice was caused to the complainant on account of adjournment, in that circumstance, the Court, following Explanation II, appended to Section 309 Cr.P.C., could have granted some costs to the complainant.

Taking into consideration the totality of the above said circumstances and to save the complainant from unnecessary

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expenditure and in order to avoid the delay in proceedings before the trial Court, I propose to dispose of this petition in limine.

Impugned order dated 10.3.2015, cancelling the bail of the petitioner is hereby set aside. It is ordered that the petitioner will be deemed to be on bail against the bail bonds already furnished and his application for exemption from personal appearance dated 12.11.2014, (Annexure P6) will be deemed to have been allowed by this Court. A direction is issued that the petitioner will put in appearance before the trial Court on next date of hearing i.e., 17.11.2015. However, the complainant will be paid a symbolic costs of Rs.500/- as costs for adjournment as per the provisions of Explanation II appended to Section 309 Cr.P.C. It is made clear that in case the petitioner does not appear on 15.11.2015 before the trial Court or does not pay/offer the costs of Rs.500/- to the complainant, this petition will be deemed to have been dismissed.

Disposed of accordingly.

October 28, 2015.
rka

(M.M.S. BEDI)
JUDGE