

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

**CRM-M-13476 of 2016
Date of Decision: May 05, 2016**

Rajni @ Vidhi

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Tribhawan Singla, Advocate
for the petitioner.

FATEH DEEP SINGH, J.

In this petition under Section 482 Cr.P.C the petitioner-Rajni @ Vidhi has sought prayer for setting aside an order dated 10.3.2016 (Annexure P/2), whereby, her prayer preferred in her application under Section 205 Cr.P.C seeking personal exemption from appearance stood declined in the case got registered against her by way of an FIR No.03 dated 5.1.2015 under Sections 323,506,34 IPC pertaining to Police Station, City Barnala pending before learned Judicial Magistrate 1st Class, Barnala.

Upon hearing learned counsel for the petitioner. The lone contention so raised by the learned counsel for the petitioner that the learned Court below has allowed similar relief to the husband of the petitioner namely Vicky Nijhawan, who was suffering from medical illness, whereas, the petitioner has been denied this relief being a lady looking after her minor son as well as ailing husband. Going through these arguments, the learned Apex Court in case of **T.G.N. Kumar vs. State of Kerala and others AIR 2011 SC 708** had detailed at length

the very ambit of Section 205 Cr.P.C. wherein the order granting exemption to the accused from personal appearance was thrashed at length, wherein, their Lordships were of the view that the satisfaction whether or not accused deserves to be exempted from personal attendance has to be of Magistrate, who is the master of the Court, insofar as the progress of the trial is concerned and none else and it was further remarked by their Lordships that provisions of Section 482 of the Code have to be exercised sparingly with circumspection and in rare cases to correct the patent illegality or to prevent miscarriage of justice for which reliance was placed on earlier view in case of **Madhu Limaye vs. The State of Maharashtra (1977) 4 SCC 551** and, thus, the very power of superintendence conferred on High Court under Article 227 of the Constitution of India both on administrative and judicial side is to be sparingly used only in appropriate cases so as to ensure that the subordinate Courts remain within the bound of their authority.

Reverting back to the present case, the impugned order on the face of it, reflects that though, learned trial Court has considered the medical ill health of the accused-Vicky Nijhawan husband of the present petitioner on account of his medical illness but has failed to enumerate what has led to hold this view qua the present petitioner. Ensuring that the very independence of the trial Court is not eroded by interference of this Court but at the same time to prevent unnecessary harassment to the petitioner who is a lady with minor son and an ailing husband the Court ought to pass a speaking order as to what weighed in the mind of the Court to deny such a relief to the petitioner-wife. Though, it is the learned trial Court who is a best judge to make out its satisfaction whether the presence of the petitioner-accused needs to be exempted or not, but in the totality of this, it would be in the fairness of the things to set aside the impugned orders to that

extent and to issue a direction to the learned trial Court to consider afresh this prayer of the petitioner on compassion who would move an application to this effect within 15 days from the date of receipt of copy of this order and the same shall be disposed off expeditiously.

The present petitions stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

May 05, 2016
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