

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

**CRM-M-33514-2016
Date of decision: 21.09.2016**

Sheekha alias Deep Shikha

...Petitioner

Versus

Jiwan Kumar alias Bhottu

...Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Preetinder S. Ahluwalia, Advocate,
for the petitioner.

Ritu Bahri, J.

This petition under Section 482 Cr.P.C is for setting aside the order dated 23.08.2016 (Annexure P-4) passed by the Additional Sessions Judge, Sangrur, dismissing the revision filed by the petitioner against the order dated 14.06.2016 (Annexure P-3) passed by the Sub Divisional Judicial Magistrate, Malerkotla, whereby his application seeking exemption from personal appearance in criminal complaint No.38 dated 04.11.2014 has been dismissed.

Learned counsel for the petitioner has referred to the complaint (Annexure P-1), whereby fist blows on the abdomen of the complainant have been attributed to the petitioner. As per the summoning order dated 10.02.2015 (Annexure P-2), there was complaint of pain in the abdomen of the complainant. Application of the petitioner seeking exemption from personal appearance has been declined vide order dated 14.06.2016 (Annexure P-3) and revision against the said order has been dismissed on 23.08.2016 (Annexure P-4).

While declining her application, it has been observed that the

petitioner was not pregnant and moreover, she was working as Assistant in the State Bank of India, therefore, exemption from personal appearance could not be granted to her.

At this stage, reference can be made to a judgment passed by this Court in **K.K. Vij and others Vs. Gautam Goel**, 2005 (2) RCR (Criminal) 455, wherein it has been observed as under:-

“6. It, thus, emerges out that the power under Section 317 Criminal Procedure Code to grant exemption to an accused from personal appearance can be exercised by the Court for the reasons like:-

- (a) if the evidence can be taken in the absence of the accused but in the presence of his counsel;
- (b) there is no obstruction caused to the primary concern of the Court in relation to the administration of criminal justice;
- (c) the Court would keep in view that the presence of the accused is not required merely to mark his presence but to expedite the trial;
- (d) the magnitude of the sufferings which the accused may have to bear in order to make himself present in the Court, cannot be altogether overlooked;
- (e) the accused is willing to give an undertaking that he would not dispute his identity and he will have no objection in taking evidence in his absence and in the presence of his counsel etc.”

In the present case, keeping in view the role attributed to the petitioner and the fact that she has a minor child to look after, her personal appearance can be exempted.

Accordingly, this petition is allowed and personal appearance of petitioner before the trial Court is exempted subject to the following conditions:-

- (i) petitioner shall be represented through counsel; (ii) shall not delay/stall the trial proceedings; (iii) shall not dispute her identity as an accused; (iv) shall have no objection, if, the prosecution evidence is recorded in her absence, but in the presence of her counsel; (v) shall appear

before the trial Court as and when required; and (vi) any other condition which the learned trial Court may impose.

21.09.2016
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No