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

**Date of decision: October 27, 2016
CRM-M-37829 of 2016**

Ankush Arora

.....Petitioner

Versus

State Bank of India

.....Respondent

CRM-M-37846 of 2016

Ankush Arora

.....Petitioner

Versus

State Bank of India

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Sandeep Arora, Advocate for the petitioner(s).

A.B. CHAUDHARI, J (Oral)

Vide this order, the above said two petitions would be
disposed of

Rule. Heard forthwith.

In a pending appeal against the judgment and order of
conviction dated 19.05.2015, in CRA No.4970/2015 and CRA
No.4971/2015, under Section 138 of the Negotiable Instruments Act, 1881
(for short 'Act'), on 05.08.2016, when the appeal was ordered for hearing,
the counsel for the appellant-petitioner was present before the lower
Appellate Court, but the the appellant-petitioner was not present. The
lower Appellate Court, thereafter, waited for sometime and then at about
3:55 P.M. cancelled the bail and issued non-bailable warrants.

Leave to amend the prayer clause to pose challenge to order dated
05.08.2016. Office to carry out amendment within one week from today.

Upon hearing learned counsel for the petitioner, I find that it is a practice in vogue that in the regular appeals before the Appellate Courts, the presence of the appellant, particular in a case arising under Section 138 of the Act, which is strictly not of criminal nature but is of *quasi* criminal nature, if the counsel for the appellant is present in the appeal, it will be harsh to take note of absence of the appellant himself, though, his counsel is present and then cancel his bail and issue non-bailable warrants for his arrest. No fruitful purpose can be served by doing so. It must be remembered that the proceedings under Section 138 of the Act being made criminal offence, is misnomer looking to the statement of reasons behind the said provision. Be that as it may, I am satisfied that the impugned order will have to be set aside and the liberty of the petitioner need not to be jeopardised during the pendency of the appeal before the lower Appellate Court.

In that view of the matter, the impugned order dated 05.08.2016 is quashed and set aside. The petitioner to continue on the same bail bonds which have been cancelled during the pendency of the appeal before the Appellate Court.

Petitions stand disposed of, accordingly.

(A.B. CHAUDHARI)
JUDGE

October 27, 2016

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No