

103

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15733-2019
Date of decision-05.04.2019

Ashwani Kumar

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Anil Kumar Garg, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner has filed this petition under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in Criminal Appeal No.CRM-312 of 2018 titled as “Ashwani Kumar Vs. State”, as the appellate Court vide its order dated 12.11.2018 proceeded to cancel the bail of convict (petitioner) on account of his absence.

Learned counsel for the petitioner contends that the Appellate Court proceeded to pass extremely harsh order on 12.11.2018 by cancelling the bail bonds and surety bonds of the appellant. It is contended that on 18.09.2018, the appellant had sought exemption from appearance before the Appellate Court and the said prayer was accepted, thereafter, the case was adjourned to 12.11.2018. However, inadvertently, the date was wrongly noted as 11.12.2018 instead of 12.11.2018 by the appellant. According to him, the absence of the appellant was not intentional or deliberate.

Since the appellant was already on bail, therefore, the petition

under Section 438 Cr.P.C may not be maintainable and on oral request of learned counsel for the petitioner, petition is treated under Section 482 Cr.P.C.

Notice of motion.

At the asking of the Court, Mr. Kirat Singh Sidhu, DAG, Punjab accepts notice on behalf of the respondent-State. A complete copy of the paper book has been furnished to the learned State counsel, in the Court.

Many a times, the accused/person can be prevented by sufficient reasons to put an appearance before the Court on a given date and therefore, it necessarily cannot be construed as a deliberate and willful absence. The explanation offered for non appearance before the appellate Court appears to be justified and therefore, the same is accepted.

Considering the above, the impugned order dated 12.11.2018 (Annexure P-3) is set aside and the petitioner is allowed to remain on the same bail bonds and surety bonds.

Disposed off.

(MANOJ BAJAJ)
JUDGE

05.04.2019

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No