

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

**CRM-M-36961-2019
Date of decision-03.09.2019**

Rajeev Kumar

....Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Anuj Balian, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner- Rajeev Kumar has filed this petition for invoking inherent powers of this Court under Section 482 Cr.P.C to challenge the order dated 22.08.2019 passed by Appellate Court in Criminal Appeal No.89 of 2019 whereby prayer on behalf of convict for exemption from personal appearance was declined and his bail was cancelled. The bail bonds furnished by the convict and his surety were also forfeited.

Learned counsel for the petitioner contends that the appeal arises from the judgment of conviction and order of sentence dated 01.02.2019 passed by the trial Court in a complaint case under Section 138 Negotiable Instruments Act, 1881. The appeal was preferred on 27.02.2019 and the prayer for suspension of sentence during pendency of appeal was allowed on 19.03.2019 and the necessary bonds were also furnished. He submits that it was the first application on his behalf for exemption which was sought on the ground that incidentally on the same date i.e. 22.08.2019 his another case was listed for hearing before this Court (in Court Room

No.55). He has invited the attention of the Court to the visitors pass dated 22.08.2019 issued in favour of Rajeev Garg which contains his photograph as well.

Learned counsel contends that the Appellate Court declined the prayer on the ground that there is nothing to suggest that the appearance of the appellant before High Court was mandatory. According to him, the Appellate Court has proceeded to pass the extreme order and the same deserves to be set aside.

A perusal of the impugned order reveals that the appellate Court took a view that the appearance of the applicant was not mandatory before this Court. But at the same time, the Appellate Court ignored the fact that every litigant has a right to pursue the litigation and it may certainly include to attend the hearing in the Court. Therefore, it cannot be construed that unless the presence of the litigant is either required in law by virtue of the statutory provisions or under the orders of the Court, he is not supposed to attend the hearing in the case.

Many a times, the litigant is also called by the Advocate for drafting the petition, reply or other assistance required for advancement of the cause of litigation. It is further evident from the impugned order that the Appellate Court has taken the conduct of the appellant adversely on the ground that he had been seeking exemptions from personal appearance before the trial Court as well. It may be noticed that the trial stood successfully completed and the exemptions were granted by the trial Court after recording the satisfaction that it is justified. Therefore, reliance upon

such concession examined by trial Court placed by the Appellate Court is unjustified to hold him habitual.

Apparently the Appellate Court has hastily passed the extreme order and the same is not sustainable. It may be reminded here that once the concession of bail or suspension of sentence is extended to the accused/convict, the Court should be slow in recalling the concession or cancelling the same until and unless there are compelling circumstances.

At this stage, this Court is of the opinion that issuance of notice to the respondent may not be necessary as it may cause unnecessary burden upon him as the appellant is willing to pursue his appeal on merits. The explanation offered for non appearance before Appellate Court appears to be justified and therefore, the same is accepted.

Considering the above, the impugned order dated 22.08.2019 (Annexure P-1) is set aside and the petitioner is allowed to remain on the same bail bonds and surety bonds.

Disposed off.

(MANOJ BAJAJ)
JUDGE

03.09.2019

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