

S.No.171

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

CRM-M-40901 of 2019 (O&M)

Date of Decision:23.09.2019

Partap Singh

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Sandeep Kumar Yadav, Advocate
for the petitioner.

Rajbir Sehrawat, J.(Oral)

This is a petition seeking quashing of order dated 25.07.2019 passed by learned Sessions Court, Narnaul, whereby on account of non-appearance of petitioner on one day, he was declared proclaimed offender by dismissing application for exemption for personal appearance; as well as order dated 23.01.2019.

It is contended by counsel for the petitioner that after the petitioner had filed appeal against his conviction and sentence under Section 138 of NI Act, the sentence imposed upon the petitioner was suspended by the Lower Appellate Court. Thereafter, the petitioner was appearing before the Lower Appellate Court. However, since these were only the proceedings of the appeal, therefore, the petitioner was under a bonafide, though mistaken, impression that the presence of the counsel for the petitioner itself would be sufficient. Therefore, feeling constrained due to the prevalent circumstances at the relevant times, the petitioner moved applications for exemptions. Earlier, the Court had been gracious enough to grant exemption to the petitioner. However, on 23.01.2019, the application moved by the petitioner; for exemption from personal appearance;

was dismissed by the Lower Appellate Court and the bail granted to the petitioner was cancelled. Thereafter, some more dates were fixed and ultimately, the petitioner was declared as a proclaimed person vide order dated 25.07.2019. On 25.07.2019 also, the petitioner could not appear because his brother, who was serving in the Army, was martyred during the call of duty. Therefore, non-appearance of the petitioner before the trial Court was not intentional. The petitioner does not have any intention to flee from course of justice. He intends to appear before the trial Court. The only prayer is that the petitioner be protected against arrest.

Still further, it is submitted that at the time of suspension of sentence, the Lower Appellate Court had also issued a direction to the petitioner to deposit 20% of the amount of compensation. Although the petitioner could not earlier deposited this amount, however, he would deposit the said amount before the Lower Appellate Court, in case, the petitioner is granted an opportunity to appear before the trial Court by protecting him against his arrest.

In view of the nature of the order which this Court intends to pass, the Court does not find it necessary to issue any notice to the opposite side. Hence, the present petition is being disposed of without issuance of the notice to the respondents.

The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and punishments as are passed qua the accused. If the accused shows his sincere intention and desire to appear before the Court, then it would not be unjustified to protect him from being

arrested.

In view of the above, the present petition is allowed and the impugned order is quashed subject to the petitioner appearing before the Lower Appellate Court on or before 30.09.2019. It is further directed that in case the petitioner so appears before the Lower Appellate Court on or before 30.09.2019 then he shall be released on bail on his furnishing bail bonds/ sureties to the satisfaction of the Lower Appellate Court.

However, the above-said order is subject to the petitioner's depositing the 20% amount; as already ordered by the Lower Appellate Court; and also payment of cost of Rs.20,000/-. The petitioner shall deposit the cost with Institute for the Blinds, Sector-26, Chandigarh.

It is further clarified that the petitioner shall be released on bail only if the petitioner produces the draft for the amount of 20% of the compensation, which has been ordered by the Lower Appellate Court, as well as the receipt of having deposited the cost of Rs.20,000/- as ordered above by this Court.

September 23, 2019
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No