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

**CRM-M-41632-2019
Date of decision-27.09.2019**

Gursher Singh

...Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Amit Arora, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner-Gursher Singh 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.CRA-89-2018, titled as “Gursher Singh Vs. SBI” pending in the Court of learned Additional District and Sessions Judge, Tarn Taran, preferred against the judgment of conviction dated 04.07.2018 passed by Judicial Magistrate First Class, Tarn Taran in a complaint under Section 138 of Negotiable Instruments Act, 1881.

Learned counsel for the petitioner contends that on 06.08.2019, the petitioner (appellant) absented and the appellate Court proceeded to cancel his bail and forfeited the bail bonds. It is submitted that the petitioner had noted the wrong date of hearing as 06.09.2019 instead of 06.08.2019 and it caused his absence before appellate Court on the said date.

When learned counsel was confronted with the maintainability of the petition, he makes a prayer to treat the petition under Section 482 Cr.P.C. The prayer is accepted.

Notice of motion to State only.

At the asking of the Court, Mr. Balbir Singh Sewak, Addl.A.G, 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.

This Court is of the opinion that issuance of notice to the respondent No.2 (complainant) may not be necessary as it may cause unnecessary burden upon him. However, it shall be open for the complainant to seek recall of this order in case the petitioner has misled this Court.

A perusal of the order dated 06.08.2019 reflects that the appellate Court proceeded to pass the extreme order for this solitary absence of appellant, who was on bail since August, 2018. Even counsel of the appellant was not present on the said date and it may be because of noting a wrong date as explained by the petitioner.

Many a times, the accused or his counsel can be prevented by sufficient reasons to put an appearance before the Court on a given date and every such absence cannot be necessarily 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 06.08.2019 (Annexure P-3) and subsequent issuance of warrants (if any) on 17.09.2019

are set aside and the petitioner is allowed to remain on the same bail bonds and surety bonds.

Disposed off.

(MANOJ BAJAJ)
JUDGE

27.09.2019

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