

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

**CRA-S-2830-2019 (O&M)
Date of decision-30.09.2019**

Mithu

....Appellant

Vs.

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Saurabh Kaushik, Advocate for the appellant.

MANOJ BAJAJ, J.

CRM-30480-2019

Application is allowed as prayed for.

Annexure A-1 is taken on record.

Main case

Through this appeal, convict-Mithu has challenged the order dated 27.08.2019 passed by Lower Appellate Court whereby it declined the application for exemption from personal appearance filed on behalf of convict and proceeded to cancel the bail bonds and forfeited the surety bonds. At the same time, the Appellate Court issued the arrest warrants against the appellant for 01.10.2019 and initiated the proceedings against the sureties as well under Section 446 Cr.P.C. The appeal arose from case FIR No.361 dated 12.08.2016 under Sections 279, 304-A and 427 IPC, Police Station City Tohana, District Fatehabad.

Learned counsel for the appellant was confronted with the maintainability of the appeal, as his appeal against the conviction is still

alive before the Appellate Court as through the impugned order, the concession of bail was withdrawn and non-bailable warrants were issued against him.

Learned counsel for the appellant makes a prayer to treat the petition under Section 482 Cr.P.C for laying a challenge to the order dated 27.08.2019. The prayer is accepted.

Notice of motion.

At the asking of the Court, Mr. Sukhdeep Parmar, DAG, Haryana 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.

Learned counsel for the appellant contends that date of hearing fixed before the Appellate Court was 27.08.2019 and it was not within the knowledge of the appellant as he had noted wrong date of hearing as 27.09.2019. Since the petitioner is driver by profession and was in Tamil Nadu on 27.08.2019 and was not well also, so when his counsel contacted him for his appearance on 27.08.2019, he requested the counsel to move an application for exemption from personal appearance.

Learned counsel further submits that the Appellate Court has proceeded to pass the extreme order by cancelling the bail of the petitioner without affording any opportunity of hearing. He submits that the matter is now fixed for 01.10.2019 and the petitioner is willing to pursue his appeal on merits.

After hearing the learned counsel for the petitioner, this Court

finds that the Appellate Court has proceeded on wrong premises to find out the reasons behind misunderstanding of the date of hearing as claimed by the convict. The Appellate Court completely ignored the fact that the reason was clearly stated in the application and convict was represented by his counsel as well. Therefore, Appellate Court ought to have extended the concession of exemption from personal appearance. Besides the Appellate Court has not recorded any satisfaction that the absence of the convict was deliberate and wilful. Many a times, the accused or 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 trial Court appears to be justified and therefore, the same is accepted.

Considering the above, the impugned order dated 27.08.2019 is set aside and the appellant is allowed to remain on the same bail bonds and surety bonds.

Disposed off.

(MANOJ BAJAJ)
JUDGE

30.09.2019
vanita

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