

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.-M No.18780 of 2020

Date of Decision: July 16, 2020

Yash Pal

...Petitioner

Versus

Punjab National Bank & another

...Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Rajesh Tushar, Advocate,
for the petitioner.

MANOJ BAJAJ, J.

Petitioner has filed this petition under Section 482 Cr.P.C. seeking quashing of the impugned order dated 28.02.2020 (Annexure P-5), whereby his application for exemption from personal appearance before the appellate Court on 28.02.2020 was dismissed by the Additional Sessions Judge, Kurukshetra and further, while cancelling his bail, non-bailable warrants were issued against him to secure his presence.

Learned counsel for the petitioner contends that pursuant to the judgment of conviction and order of sentence dated 17.01.2019 passed by the trial Court (Annexure P-1), the petitioner preferred the statutory appeal before the Additional Sessions Judge, Kurukshetra and the same was admitted. At the same time, the concession of suspension of sentence was extended to him vide order dated 18.02.2019 (Annexure P-3). It is pointed out that on 16.01.2020, the petitioner could not appear before the appellate Court because of illness and, therefore, applied for exemption from personal appearance and the same was allowed. He submits that on the said date, the

application filed by the complainant for directing the convict to deposit 20% of compensation awarded by the trial Court was pending, wherein the reply on behalf of the convict was filed and the case was adjourned to 28.02.2020. The petitioner could not put in appearance because of his poor health on the said date and, therefore, again sought exemption from personal appearance on the said date, however, the prayer was declined by the appellate Court and the bail was cancelled. According to him, the petitioner was prevented by a sufficient reason to put in appearance before the Appellate Court.

Learned counsel has argued that the petitioner is the appellant and, therefore, his appeal is to be decided in his presence and the petitioner is willing to participate in the proceedings. It is prayed that the impugned order be set-aside and he be allowed to join the proceedings.

Notice of motion.

On the asking of Court, Mr. Sukhdeep Parmar, learned Deputy Advocate General, Haryana accepts notice on behalf of the State. Learned counsel for the petitioner is directed to send a complete copy of the paper book to the learned State counsel through email.

This Court is not inclined to issue any notice to respondent No.1-Bank as the nature of order being passed herein would not cause any prejudice to the complainant. However, it shall be open for it to file the application for recalling of this order in case the petitioner has misled this Court by concealing material facts.

The above facts, circumstances and the orders passed by the appellate Court clearly reveal that the sole ground adopted by the Additional Sessions Judge, Kurukshetra in cancelling the bail is the absence of the petitioner on the said date. It is not a case where the accused or his pleader

did not appear, but a reason was given for his absence and the exemption from personal appearance was sought on his behalf by his counsel. Further, the order dated 16.01.2020 makes it absolutely clear that the case was adjourned for 28.02.2020 for arguments on the complainant's application for direction to convict to pay 20% compensation.

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 28.02.2020 (Annexure P-5) and subsequent issuance of warrants (if any) are set-aside and the petitioner is allowed to remain on the same bail bonds and surety bonds.

Disposed off.

July 16, 2020
ramesh

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No