

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

261 + 263

Date of decision: 18.04.2022
CRA-S-598-2022

SAROJANIAppellant

Versus

STATE OF HARYANA AND ANOTHER ...Respondents

2. **CRA-S-599-2022**

SAROJANIAppellant

Versus

STATE OF HARYANA AND ANOTHER ...Respondents

3. **CRA-S-600-2022**

SAROJANIAppellant

Versus

STATE OF HARYANA AND ANOTHER ...Respondents

4. **CRA-S-601-2022**

SAROJANIAppellant

Versus

STATE OF HARYANA AND ANOTHER ...Respondents

5. **CRA-S-608-2022**

SAROJANIAppellant

Versus

STATE OF HARYANA AND ANOTHER ...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Surinder Gandhi, Advocate
for the appellant(s).

Mr. Kanwar Sanjiv Kumar, Asstt. A.G. Haryana.

Mr. D.V. Sharma, Senior Advocate with
Mr. Manbir Singh, Advocate
for respondent No.2.

VINOD S. BHARDWAJ. J. (ORAL)

1. The present appeals have been filed by the appellant against the orders detailed below, passed by learned Additional Sessions Judge, Gurugram whereby Additional Sessions Judge, Gurugram rejected the application filed by the appellant for seeking exemption for personal appearance and cancelled the bail and while directing forfeiture of the bail bond and surety bond to the State, directed notice to the surety. The date of the respective order in each of the appeals as tabulated as under:-

Appeal No.	Title	Date of Impugned Order
CRA-S-598-2022	Sarojani versus State of Haryana and another	22.02.2022
CRA-S-599-2022	Sarojani versus State of Haryana and another	22.02.2022
CRA-S-600-2022	Sarojani versus State of Haryana and another	22.02.2022
CRA-S-601-2022	Sarojani versus State of Haryana and another	22.02.2022
CRA-S-608-2022	Sarojani versus State of Haryana and another	13.09.2021

2. The present appeals came up for hearing on 11.04.2022 whereby a question was raised as to the maintainability of the petition under Section 449 of the Cr.P.C. which contemplates an appeal against the order passed under Section 446 of the Cr.P.C. A procedure is provided for under Section 446 Cr.P.C. to be followed when bail/surety bond is ordered to be forfeited. Learned counsel appearing on behalf of the appellant has submitted that vide the order under challenges the Court has taken a recourse to the proceedings under Section 446 Cr.P.C. and notice has already been issued to the surety and identifier and as such the said order would fall within the domain of an order

passed under Section 446 Cr.P.C. and the same shall be appealable under Section 449 Cr.P.C. He, however, submits that he does not press for his challenge to the subsequent orders passed by Additional Sessions Judge, Gurugram which are in relation to securing the presence of the appellant and restricts his appeal only to the extent of the impugned order whereby proceedings in terms of Section 446 have been initiated.

3. Learned counsel appearing on behalf of the appellant has submitted that an application for exemption had been submitted on behalf of the appellant on account of personal difficulty. However, the said application was not accepted and consequently the bail was cancelled bail bonds/surety bond forfeited and notice issued to the surety and the identifier. He undertakes to appear before the Lower Appellate Court and to continue with his appearance on all subsequent dates unless exempted by the Court in accordance with law.

4. Mr. Kanwar Sanjiv Kumar, Asstt. A.G. Haryana has no objection to the same.

5. Mr. D.V. Sharma, Senior Advocate has however opposed the submission of the Appellant to contend that no valid explanation had been tendered by him for his non-appearance and that his absence has led to an inordinate delay of the proceedings and that any such concession ought not be extended.

6. I have heard learned counsel for the parties and have noticed that the proceedings in question had been initiated under Section 138 of the Negotiable Instruments Act. Appeal is pending before the Court of Additional Sessions Judge, Gururam.

7. The appellant had been diligently pursuing his appeal and there can be a valid reason for failure of the appellant to appear before the court considering that the age of the appellant is more than 60 years. Besides, there is no such mandate in law that an accused, whose sentence has been suspended in an appeal, is required to be present on all dates of hearing fixed before the Appellate Court and that her failure to appear in the proceedings would necessitate a cancellation of bail and forfeiture of the bail bond. Besides, there is also no reference to the any specific order whereby the Court had directed the appellant to remain present on the said date. It cannot thus be assumed that the appellant was in breach of any of the condition of bail/suspension of sentence imposed upon on her at the time of suspending the sentence under Section 389 Cr.P.C.

8. Without adverting to the issues as to whether an appellant is required to remain present before Appellate Court on all dates when appeal is fixed for hearing and noticing that the proceedings are appellate proceedings for offence under Section 138 of the Negotiable Instruments Act, 1881 which is otherwise a bailable offence and also the undertaking given by the appellant to appear before the Appellate Court on all dates, unless exempted by the Court, I deem it appropriate to allow the present appeals.

9. The object of the statute is to ensure expeditious adjudication of the appeals instead of delaying the same on minor technicalities. Procedural laws are hand-maiden of justice and intend to secure ends of justice while ensuring fairness in proceedings and expeditious disposal thereof. The very fact that the appellant is willing

to appear before the Court and continue appearance can be taken as an expression of her bona fide. No pedantic approach is required to be followed in such matters and the larger interest of the contesting parties as well as the smooth functioning of the system of administration of criminal justice has to be kept in mind.

10. The impugned orders referred to in the table above, in respective appeals, are set aside.

11. The appellant is directed to appear before the Lower Appellate Court within 10 days from today and furnish her fresh bail bonds to the satisfaction of the Lower Appellate Court subject to deposit of Rs.2500/- as cost in each appeal with the “District Legal Services Authority, Gurugram.

The appeal are accordingly allowed in terms as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 18, 2022
vishal sharma

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>