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

**CRR-1670-2021 (O&M)
Date of Decision: 06.01.2022**

M/s Shalimar Engineering through its partner Gaurav Sood

.. Petitioner

Vs.

M/s Bharti Enterprises and another

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Vikram Singh Punia, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

Through this revision petition, the convict (petitioner) has challenged the order dated 17.11.2021, whereby the Appellate Court refused to accept his application for exemption from personal appearance and cancelled his bail.

Learned counsel has argued that against the judgment of conviction dated 11.12.2019 and order of sentence dated 14.12.2019 in a complaint case No.3310 dated 07.12.2017 under Section 138 Negotiable Instruments Act, 1881, the petitioner had preferred an appeal before the Court of Sessions, wherein his sentence was suspended vide order dated 13.01.2020. He submits that in March, 2020, pandemic COVID-19 broke out and, therefore, no effective proceedings could take place in the appeal and the appeal was adjourned on numerous occasions, and the petitioner was granted exemption from personal appearance also. He has argued that on 17.11.2021, the exemption from personal appearance was sought by the petitioner on the ground of sickness, however, as his application was not supported with any medical certificate, the Appellate Court declined the

application, and proceeded to pass the extreme order of cancellation of bail. Learned counsel states that the case is now coming up for hearing before the Appellate Court on 07.01.2022 and the petitioner is willing to settle the matter with the complainant. He further undertakes that the petitioner would appear tomorrow before the Appellate Court and prays for setting aside this order.

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

The prayer is accepted.

Notice of motion.

At this stage, Mr. Sukhdeep Parmar, DAG, Haryana, accepts notice on behalf of the respondent-State and states that the advance copy of the petition has already been received by him. He opposes the prayer and submits that since the petitioner was well-aware of the date of hearing before the trial Court, but he failed to appear, therefore, the Court is justified in cancelling his bail. However, according to him, the appeal arises from a complaint case and respondent No.1/complainant would be the contesting party.

Considering the issue raised in this petition, this Court does not deem it necessary to hear the complainant at this stage, as it would put extra financial burden upon it. However, it shall be open for it to seek recalling of this order, in case, the petitioner has concealed the material facts from this Court.

After hearing the learned counsel, this Court finds that in the impugned order, the Appellate Court has made an observation that for non-

appearance of appellant, the appeal is lingering on, but his previous applications for exemption from personal appearance were accepted, therefore, this circumstance cannot be taken against him, particularly when there was break out of global pandemic COVID-19 during this period. Apart from it, various restrictions were also imposed by the State of Haryana in order to curb the spread of disease and this also added delay in hearing of cases. On 17.11.2021, though the lawyer on behalf of the appellant had appeared, who had moved an application, but the ground raised by the appellant was disbelieved by the Appellate Court and it resulted into the cancellation of his bail.

At 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 by petitioner for non appearance before the appellate Court appears to be justified and therefore, the same is accepted.

Consequently, the impugned order dated 17.11.2021 is set aside subject to appearance of the petitioner before the trial Court tomorrow i.e. 07.01.2022 and he is allowed to remain on the same bail bonds and surety bonds furnished by him pursuant to the order dated 13.01.2020. In the event of non-compliance of this order, the order dated 17.11.2021 would remain intact.

Disposed off.

06.01.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes No
Yes No