

236(2) IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-8528-2023 (O&M)
Date of Decision: 09.04.2024

DEEPAK CHAURASIA

...Petitioner

V/S

STATE OF HARYANA

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Edward Augustine George, Advocate with
Mr. Manish Gilhotra, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

Mr. Dharmendra Kumar Mishra, Advocate (through V.C.)
with Mr. Naveen Shrma, Advocate
for the complainant.

HARPREET SINGH BRAR J. (Oral)

1. The petitioner through instant petition filed under Section 482 of Cr.P.C. is seeking quashing of the order dated 04.02.2023 passed by learned Additional Sessions Judge, Gurugram, whereby the application filed by the petitioner seeking permanent exemption from personal appearance has been declined and further the bail bonds of the petitioner in FIR No. 147 dated 20.03.2015 registered under Section 67-B of IT Act, Sections 469/471/180/120-B of Indian Penal Code and Section 23 of POCSO Act at Police Station Palam Vihar, District Gurugram, has been cancelled.

2. Learned counsel for the petitioner submits that petitioner is a resident of Delhi and the trial in the FIR(supra) is pending before the competent Court of Jurisdiction at Gurugram. It is further contended that the charges against the petitioner were framed on 14.07.2023 and trial of the case is progressing at snail's pace as only 5, out of 15 prosecution witnesses have been

examined so far and attending the trial on each and every date would cause great inconvenience and hardship to the petitioner and it will also affect his livelihood.

3. Per contra, learned counsel for the complainant, opposes the prayer made by the petitioner on the ground that keeping in view serious allegations levelled against the petitioner, he is not entitled for the exemption from personal appearance.

4. Learned State counsel also opposes the prayer made by the petitioner on the ground that his presence is required during the course of trial, however, he could not controvert the fact that charges have been framed against the petitioner on 14.07.2023 and only 5 PWs, out of 15, have been examined so far.

5. Having heard the learned counsel for the parties and after going through the record with their able assistance, it is evident that charges against the petitioner have been framed on 14.07.2023 and only 5 PWs, out of 15, have been examined so far.

6. A two Judge Bench of the Hon'ble Supreme Court in *S.V. Muzumdar v. Gujarat State Fertilizer Co. Ltd* 2005(2) RCR (Criminal) 860, speaking through Justice Arijit Pasayat, has laid down the law that while deciding on the issue of exemption, the Court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence. Further, a two Judge Bench of the Hon'ble Supreme Court has laid down the ratio in *M/s. Bhaskar Ind. Ltd. v. M/s. Bhiwani Denim & Apparels Ltd., 2001(4) RCR (Criminal) 137* that the accused need not appear before the

Magistrate and that the Magistrate can allow the accused to make even the first appearance through his counsel. Speaking through Justice K.T. Thomas, the following was observed:

"14. The normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be present in the Court, provided he has been granted exemption from attending the Court. The concern of the criminal Court should primarily be the administration of criminal justice. For that purpose the proceedings of the Court in the case should register progress. Presence of the accused in the Court is not for marking his attendance just for the sake of seeking him in the Court. It is to enable the Court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the Court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear within in order to make himself present in the Court in that particular case.

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17. Thus, in appropriate cases the magistrate can allow an accused to make even the first appearance through a counsel. The magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the Court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, one precaution which the Court should take in such a situation is that the said benefit need be granted only to an accused who gives as undertaking to the satisfaction of the Court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in Court and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses."

7. Therefore, in view of the facts and circumstance of the case and the ratio laid down by this Court in ***Suresh Kumar and another Vs. The State of Haryana and another*** 2023 (2) Law Herald 1498, the personal appearance

of the petitioners before the learned trial Court is ordered to be exempted, subject to the following conditions:-

- (i) petitioners shall be represented through their counsel;
- (ii) shall not delay/stall the proceedings;
- (iii) shall not dispute their identity;
- (iv) shall have no objection if the prosecution evidence is recorded in their absence but in the presence of their counsel;
- (v) shall appear before the Court as and when required; and
- (vi) any other condition, which the Court below may impose.

8. Disposed of accordingly.

09.04.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No