IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

04 **CRM-M-41290-2023**
Reserved on: 07.08.2026
Pronounced on: 11.09.2026

JAI BHAGWAN GONDIA

..... PETITIONER

VERSUS

STATE OF HARYANA AND ANR.

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Present : Mr. Dhiraj Chawla, Advocate
for the petitioner.

Mr. Vishal Singh, AAG, Haryana.

Mr. Manjeet Singh, Advocate
for the respondent No.2.

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SURYA PARTAP SINGH. J.

1. This is a petition filed by the petitioner under Section 482 of the Code of Criminal Procedure, hereinafter being referred to as Cr.P.C.

2. By virtue of this petition, the petitioner is seeking for the setting aside of order dated 04.07.2023 (Annexure P-7) passed by the learned Judicial Magistrate 1st Class, Jagadhari (Yamuna Nagar), hereinafter being referred to as trial Court only.

3. In nut-shell the facts emerging from record are that for the commission of offence punishable under Sections 499, 500, 166, 167, 217, 218 and 120-B of Indian Penal Code, a complaint, i.e. complaint No.COMI No.161

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of 2016 titled as 'Banwari Lal Vs. Jai Bhagwan Gondia & Ors.' is pending in the Court of learned trial Court. In the above-mentioned complaint, the petitioner has been summoned as an accused. The record further reveals that the petitioner in the above-mentioned petition had filed an application seeking for exemption from personal appearance on each and every date. However, by virtue of order dated 04.07.2023, hereinafter being referred to as impugned order, the above-mentioned application has been dismissed.

4. Aggrieved of the above-mentioned order, hereinafter being referred to as impugned order, the present petition has been filed on the ground that the learned trial Court has committed an error of judgment while dismissing the above-mentioned application filed by the petitioner. According to petitioner, without considering the ground realities and the relevant law, merely on the basis of whims and fancies, the impugned order has been passed, which deserves to be set-aside.

5. Heard.

6. It has been contended on behalf of petitioner that petitioner at the time of filing of application in the year 2023 was a 72 years old retired public servant, and that with regard to an act done by the petitioner in his capacity as public servant, he was summoned as an accused. According to learned counsel for the petitioner, the petitioner has been summoned to face trial at Yamuna Nagar, whereas after retirement he has settled at Faridabad. The learned counsel for the petitioner, has further contended that being an old age person, the petitioner is suffering from multiple health related issues such as Hypertension, Diabetic, Liver Disease and Coronary Artery Disease, and that he has undergone coronary angioplasty. As per learned counsel for the petitioner in

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view of above-mentioned multiple medical issues, coupled with old age, it is very difficult for the petitioner to travel from Faridabad to Yamuna Nagar and participate in the Court proceedings.

7. In addition to above, it has also been contended by learned counsel for the petitioner that in the above-mentioned complaint, the petitioner has engaged a counsel, and that his counsel has been representing the petitioner before the learned trial Court during the course of trial. As contended by learned counsel for the petitioner since there is no issue with regard to identification of petitioner in the Court, his physical presence in the Court, on each and every date, is merely a formality. While claiming that physical presence of petitioner is not likely to have any impact on the proceedings of the case, it has been contended by learned counsel for the petitioner that personal appearance of the petitioner on each and every date should have been exempted by the learned trial Court, but the learned trial Court, while adopting a very harsh approach, has illegally refused the above-mentioned concession to the petitioner. As per learned counsel for the petitioner, the above-mentioned approach of learned trial Court is contrary to the principles of natural justice, particularly in view of the fact that the petitioner has no objection, if the complainant's evidence is recorded in his absence.

8. On the basis of above-mentioned arguments, the learned counsel for the petitioner has contended that instant case is a fit case, wherein the extra-ordinary jurisdiction vested in this Court should be exercised, to check the miscarriage of justice. Thus, it has been contended, by learned counsel for the petitioner, that by quashing the impugned order, the application filed by the petitioner seeking for exemption from appearance in the Court on each and

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every date, be allowed. As per learned counsel for the petitioner, similar benefit has been accorded by the learned trial Court to the similarly placed co-accused.

9. The learned State counsel being assisted by learned counsel for the respondent No.2 has controverted the above-mentioned arguments. According to learned counsel for the respondent No.2 a false, frivolous and baseless ground has been created by the petitioner just to seek exemption from appearing in the Court on each and every date. According to learned counsel for the respondent No.2 the Code of Criminal Procedure prescribes that every accused is supposed to be present in the Court during the course of trial, and that the same provisions of law are applicable to the present petitioner himself.

10. It has been further contended by learned counsel for the respondent No.2 that the cause of action for filing the complaint had accrued within the territorial jurisdiction of District Yamuna Nagar, and therefore, the complaint has been filed by the respondent in a Court, exercising jurisdiction in Yamuna Nagar District. As per learned counsel for the respondent No.2 simply because the petitioner has shifted his residence to some other district cannot be a ground to seek exemption from personal appearance on each and every date.

11. While defending the impugned order, it has been contended by learned counsel for the resplendent No.2 that a false ground has been created by the petitioner, and that no illegality, whatsoever has been committed by the learned trial Court by denying the concession, sought by petitioner, i.e. exemption from appearing in the Court on each and every date of hearing.

12. The record has been perused carefully.

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13. In view of factual matrix of the present case, in my considered opinion, following are the relevant factors, which are required to be taken into consideration for arriving at a decision in the present petition:-

i. that the petitioner is approximately 75 years old person;

ii. that after retirement he has settled at Faridabad and the trial is taking place at Yamuna Nagar. The distance between the two places is approximately 200 kms;

iii. that there is no dispute qua the identity of the petitioner, and therefore, the petitioner is not to be identified by complainant/prosecution witnesses during the course of trial;

iv. that the petitioner is being represented by his counsel on each and every date;

v. that the petitioner has no objection, if the complainant/prosecution evidence is recorded in his absence;

vi. that the physical presence of petitioner in the Court on each and every date is not going to prejudice the cause of the respondent/complainant, or the cause of justice, in any manner, whatsoever.

14. Taking into consideration the cumulative effect of all the above-mentioned factors, in my considered opinion in the given fact situation the appropriate order which should have been passed by learned trial Court, would have been to accord liberty to the petitioner, and allow him to be represented by

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his counsel during the course of trial, without asking for physical appearance of the petitioner in the Court on each and every date.

15. In view of above-mentioned observations, it is hereby hold that there is need for exercise of extraordinary jurisdiction vested in this Court by virtue of Section 482 of Cr.P.C. Hence, by invoking the above-mentioned jurisdiction, it is hereby held that the impugned order, which is apparently perverse, deserves to be set aside.

16. As a sequel to above-mentioned observations, the present petition is hereby allowed and the impugned order is hereby set aside. The personal appearance of petitioner on each and very date, during the course of trial is exempted. However, the learned trial Court shall be at liberty to seek personal appearance of the petitioner at the stage of framing of charge and recording of statement of accused under Section 313 Cr.P.C. It is also clarified that during the course of trial, if there is need for physical presence of petitioner on a particular date, the learned trial Court shall be at liberty to pass a specific order, alongwith reasoning, for personal appearance of the petitioner. In addition to above, the learned trial Court shall also be at liberty to seek the presence of petitioner on any such date through video conferencing mode.

17. With the above-mentioned observations, the present petition is hereby allowed and the impugned order is hereby set aside. The present petition stands **allowed**, accordingly.

(SURYA PARTAP SINGH)
JUDGE

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Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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