

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Cr.Revision No.30-P/2017

Tahir Khan and two others.

Petitioner (s)

VERSUS

The State etc.

Respondents

For Petitioners :-	<u>Gul Ajab Khan, father of petitioner</u> <u>No.1 in person.</u>
For State :-	<u>Mr. Arshad Ahmad, AAG.</u>
For complainant:-	<u>Mr. Muhammad Ilyas Orakzai,</u> <u>Advocate</u>
Date of hearing:	<u>12.11.2018</u>

ORDER

ROOH-UL-AMIN KHAN, J:- Through this criminal revision petition under section 439 Cr.P.C., the petitioners have questioned the order dated 18.01.2017, passed by the learned trial Court/Additional Sessions Judge-I, Hangu, whereby petitioners' application under section 540-A Cr.P.C. for their exemption from personal appearance was dismissed, consequently, their bail was recalled and proceedings under section 514 Cr.P.C. were initiated against their sureties.

2. Facts in brief forming the background of the instant revision petition are that petitioners are accused in case FIR No.648 dated 01.08.2016, registered under

section 354-A, 355 and 149 PPC, at Police Station City Hangu. Ad-interim pre-arrest bail of petitioners was confirmed by the learned trial court vide orders dated 13.04.2018 and 11.08.2018, on the sole ground of compromise. Later on, challan was submitted against the petitioners and co-accused. When summoned, co-accused Sawir and Imran appeared before the learned trial Court, whereas the petitioners being abroad in connection with earning their livelihood, did not appear, hence, NBWA was issued against them vide order dated 02.01.2017 and learned defence counsel directed to produce the petitioners on the next date of hearing i.e. 18.01.2017. On the said date, learned counsel for defence submitted an application for exemption of the petitioners from their personal appearance but the same was dismissed. Bail of the petitioners was recalled and proceedings under section 514 Cr.P.C. initiated against sureties of the petitioners vide order dated 18.01.2017, hence, this revision petition.

3. Learned counsel for the petitioners is not in attendance. Learned AAG for the State and learned counsel for the respondents heard and this petition is being disposed of on the available record.

4. The main question for determination before this Court is whether exemption can be granted to an accused by the Court in absentia. To understand the intention of the Legislature, section 540-A Cr.P.C. is reproduced below:-

“S.540-A:- (1) At any stage of an inquiry or trial under this Code where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence and may at any subsequent stage of the proceedings, direct the personal attendance of such accused”.

Section 540-A Cr.P.C. has been coached in plain language which does not postulate the physical presence of accused as a conditioned precedent for granting exemption to him. If it was intended by the law maker to attach such condition, then it would have done it by mentioning the same clearly and in unambiguous term. The term used **“before the Court”**, employed in section 540-A Cr.P.C. does not necessarily means and points towards the physical presence of the accused. It is settled principle of interpretation of Statute that while interpreting a Statute relating to the realm of criminal law, which transgresses/encroaches upon the liberty of person or property of a subject, much care and caution be observed and the interpretation be made in a manner which is to preserve such right and not to disturb the same subject of course having regard to the express language of the Statute by not committing any violence to it. Guidance in this

regard can be derived from the judgment of the Hon'ble apex Court in case titled, "**State Vs Qaim Ali Shah (1992 SCMR 2192)**).

5. Admittedly, the petitioners after getting their pre-arrest bail on the basis of compromise proceeded abroad in connection of earning their livelihood. Besides, one of the petitioners is present before the Court who by appearance seems to have feeble financial position. Keeping in mind the factum of compromise between the parties and the law on the subject, the learned trial Court by refusing exemption, re-calling bail and initiating proceedings under section 512 and 514 Cr.P.C. has unnecessarily burdened its self for no good reason.

6. Accordingly, this petition is allowed. The impugned order of the learned trial Court is hereby set-aside. The application of the petitioners under section 540-A Cr.P.C. is allowed and they are exempted from personal appearance before the learned trial Court till conclusion of the trial i.e. the stage of closure of the prosecution evidence, in case of trial, otherwise, till final decision of the case, if the complainant party is no more interested to prosecute the petitioners.

Announced:
12.11.2018

Siraj Afridi P.S.

JUDGE