

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
JUDICIAL DEPARTMENT**

**Cr.R.No.50-P/2021**

**JUDGMENT**

Date of hearing: 27.9.2021

Mr.Zulfiqar Ali, Advocate for the petitioner.

Mr.Muhammad Inam Yousafzai, AAG for the State.

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**LAL JAN KHATTAK, J.-** This petition is directed against the order dated 08.02.2021 of the learned Additional Sessions Judge-III, Mardan whereby the petitioner's application for grant of exemption to him from his personal appearance before the court has been dismissed.

2. On 10.6.2018, one Muhammad Ijaz Khan lodged a report bearing FIR No.348 under section 324 PPC at Police Station, Shahbaz Garhi of District Mardan wherein he charged the petitioner for his firing at him. The case was put in court for trial on 29.10.2018 and consequently the petitioner was summoned who appeared before the court on 31.01.2019 whereafter charge was framed on 06.05.2019 to which he pleaded not guilty. During pendency of the case,

petitioner, on 05.09.2019, moved an application for exemption from his personal appearance but before any decision could come on his application he left the country as a result non-bailable warrants of arrest were issued against him and vide order dated 18.07.2020, the exemption application was dismissed. It reflects from the record that thereafter on 10.10.2020, petitioner appeared before the court and joined the case proceedings. On 11.11.2020, he again did not attend the court and consequently NBW was issued against him for 08.02.2021, on which date his father appeared before the court and submitted an application for grant of exemption to his son from his personal appearance which application was dismissed by the learned trial court through the order impugned herein, hence, the instant petition.

3. Arguments heard and appended record gone through.

4. It reveals from the record that on commencement of the trial, petitioner did appear before the learned trial court and denied the indictment. During pendency of the proceedings, he moved an application for grant of exemption to him from his

personal appearance before the court but before passing any order on his application, he left the country whereafter NBW was issued against him. Consequently, he appeared and remained before the learned trial court for sometime but again left the country without getting any permission from the court. From perusal of the record, it reveals that the petitioner did not appear before the court for his not being in the country and in his absence his father attended the court and requested for grant of some time to him so that his son could come to the country. Ibid conduct of the petitioner and his father amply shows that they had due regard for the court and law. No doubt, twice petitioner left the country without getting any permission from the court but his such non-appearance cannot be taken like that of an absconder because he left the country through a legal means when he was on bail and had attended the court for some time and also for livelihood after arranging a visa against a colossal amount. At abroad he is working as a driver, per statement of his father before the court, and thus he is lawfully earning for himself, for his family and also sending remittances

to the country. Further, it is a known fact that at abroad, the low paid employees are always at the mercy of their employers. They cannot return to their country on leave unless complete a specific period with their employers and their return also needs huge amount for which the hapless employees wait for years and years.

5. As for a lawful purpose and activity the petitioner had left the country, had returned his homeland earlier and appeared before the court, therefore, his non-appearance should have been condoned by granting him exemption from his personal appearance particularly when not only his father was appearing before the court but he was also represented before the court by his lawyer.

6. Though under section 540-A Cr.P.C. exemption from personal appearance can be granted only when there are two or more than two accused in the case and where the accused physically appears before the court and claim exemption but in suitable cases exemption can be granted when there is single accused before the court and even when he is not physically present before the

court at the time of claiming exemption.  
(Wisdom is sought from **PLD 2004 SC 160**).

7. For what has been discussed above, this petition is allowed and on setting aside the impugned order, the desired exemption is granted to the petitioner from his personal appearance before the court as prayed for.

**JUDGE**

Announced  
27.9.2021.

Sadiq Shah, CS (SB) Hon'ble Mr. Justice Lal Jan Khattak.