

MOHAN SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Sarika Gupta, Advocate
for the petitioner.

Mr. RPS Sidhu, AAG, Punjab.

JASPAL SINGH, J (ORAL)

Challenge in the instant petition is to order dated January 05, 2015 (Annexure P-5) passed by learned trial Court whereby, an application (Annexure P-4) moved by petitioner to release the bank guarantee of ₹2,00,000/- furnished by him in the shape of FDR while getting permission to go abroad, was declined.

2. In nut shell the facts giving rise to instant *lis* are that petitioner has been facing trial in case FIR No. 90 dated October 22, 2009 under Sections 323, 325, 506 and 34 IPC registered at Police Station Behram, District Shaheed Bhagat Singh Nagar and during pendency thereof, he moved an application for permission to visit abroad i.e. the place of his abode in America. He was granted the necessary permission vide order dated April 06, 2013 (Annexure P-2) and exempted his personal appearance till further orders subject to following conditions.

1. *That he will furnish bank guarantee of a nationalized bank to the tune of 2 lacs.*
2. *That he will not dispute his identity.*
3. *That he will not change his counsel without prior permission of the Court.*
4. *That his counsel will appear on each and every date of hearing on his behalf and will cross-examine all the witnesses examined by the complainant.*
5. *That he will appear in the Court **as and when summoned**.*

4. When petitioner was away to abroad i.e. America, prosecution closed its evidence on August 20, 2014 and case was fixed for eliciting the explanation of petitioner as required under Section 313 Cr.P.C.. Thereafter, case was adjourned to September 29, 2014 for the said purpose. However on September 29, 2014 learned trial Court required the counsel appearing on behalf of petitioner to produce the petitioner/accused in Court on October 10, 2014 but on the said date, petitioner could not appear while coming from America. Considering the absence of petitioner willful or otherwise, learned trial Court issued non-bailable warrants while cancelling his personal bonds and surety bonds and also ordered the forfeiture of bonds furnished by petitioner.

5. Petitioner returned from abroad and furnished fresh bonds as per satisfaction of learned trial Court on November 10, 2014. Ultimately the trial of petitioner culminated into his acquittal, as is evident from order dated January 19, 2015 (Annexure P-3).

6. A close scrutiny of record and various orders passed by learned trial Court reveals that as per condition No.5 of order dated April 06, 2013 (Annexure P-2) whereby, petitioner was granted permission to go abroad, no notice/summon has been issued calling upon him to appear in Court prior to passing of non-bailable warrants and cancellation/forfeiture of bail bonds vide order dated

September 29, 2014.

7. Moreover, there is also no specific order with regard to forfeiture of bank guarantee passed by learned trial Court. Even no show cause notice has been issued to petitioner by learned trial Court as to why the bank guarantee be forfeited. It appears that learned trial Court mistook, misappreciated the actual facts. The bank guarantee is still operative in the shape of FDR to which the petitioner is entitled to get back especially, when trial has culminated in acquittal of petitioner.

8. In the light of what has been discussed above, instant petitioner is allowed; impugned order dated January 05, 2015 (Annexure P-5) is set aside and learned trial Court is directed to release the bank guarantee of ₹2 lacs furnished by petitioner in terms of order dated April 06, 2013, forthwith.

JULY 23, 2015
SHAM

(JASPAL SINGH)
JUDGE