

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRL. MISC. No.M-6987 OF 2017 (O&M)
DATE OF DECISION : 3rd MARCH, 2017

Joga Singh & others

.... Petitioners

Versus

State of Punjab & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Deepak Bardwaj, Advocate for the petitioners.

* * * *

A. B. CHAUDHARI, J. (ORAL)

In CRM-M-31819-2016 in a petition filed by Joga Singh and others decided on 15.09.2016 this Court had declined to interfere with the prayer that was made and also observed that the trial cannot be continued to be delayed. There was also prayer for grant of permanent exemption from appearance and therefore, this court directed that the trial Court would be in a better position to find out whether the prayer for permanent exemption raised on the ground of illness etc. of the petitioners, by examining the relevant medical papers, was justified. This Court also expected that trial Court would decide the application sympathetically and conclude the trial within four months. The period of four months has expired in January, 2017.

Learned counsel for the petitioner has invited my attention to various zimini orders. I find that the prosecution witnesses have consistently remained absent before the trial Court for deposing in the Court and not only that the trial Court issuedailable warrants for

securing their presence. That appears to be the reason why the trial could not be completed within stipulated period. By the impugned order the learned trial Court had rejected the prayer for personal exemption for permanent exemption in respect of the petitioners No.1 to 3 namely Joga Singh, Man Kaur & Pritpal Singh. Two petitioners are said to be old persons while Joga Singh appears to be young person but he is resident of United States of America. By the impugned order the trial Court issued non-bailable warrant against Pritpal Singh.

Looking to the above factual background, particularly about the absence of the prosecution witnesses before the trial Court on number of occasions, I think the petitioners cannot be totally blamed in the matter of holding of trial. It is in this context, I think grant of exemption on date-to-date basis ought to be considered though not on permanent basis, particularly because this Court extends the time for completion of trial till 31st March, 2017.

Learned counsel for the petitioners has made a categorical statement on instructions from his clients also with reference to Section 273 Cr.P.C. that none of the petitioners will have any objection for recording of evidence in their absence if they are granted exemption on date-to-date basis. He also submits that all the petitioners would surrender their passport before the trial Court as a pre-condition for seeking personal exemption above. I think this undertaking takes sufficient care and therefore, I make the following order:

ORDER

1. (i) CRL. MISC. No.M-6987 OF 2017 is partly allowed.

- (ii) Impugned order, issuing non-bailable warrant against Pritpal Singh dated 31.01.2017, is quashed and set aside.
- (iii) Time for concluding the trial is extended till 31st March, 2017.
- (iv) The petitioners shall surrender their passport before the trial Court on 10.03.2017 i.e. the next appointed date in the trial Court, which shall be taken into custody by the trial Court.
- (v) The petitioners shall file undertaking first before the trial Court that they would have no objection at any stage of the trial or thereafter in the wake of Section 273 Cr.P.C. for recording of the evidence of the witnesses in their absence and would be bound by the evidence and cross-examination of the prosecution witnesses and would not raise any objection that the defence was recorded in their absence but through their pleader.

3rd MARCH, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No.</i>