

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

**Criminal Misc. No. M-29461 of 2018
Date of decision: 18.07.2018**

Naveen Rao

..Petitioner

Versus

**Central Bureau of Investigation (CBI)
ACB, Chandigarh**

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. A.P.S. Deol, Sr. Advocate with
Mr. Vishal Rattan Lamba, Advocate
for the petitioner.

Mr. Sumeet Goel, Standing Counsel
for the respondent -CBI.

Daya Chaudhary, J. (Oral)

This petition has been filed under Section 482 Cr.P.C. for quashing of impugned order dated 31.05.2018 passed by the Special Judge, CBI, Haryana, Panchkula, whereby, the bail/surety bonds of the petitioner have been cancelled and forfeited to the State on account of non-appearance of one date and presence of the petitioner has been ordered to be secured by issuance of non-bailable warrants.

Learned counsel for the petitioner submits that the petitioner has been attending the Court proceedings regularly and he could not appear only on one date. An application seeking exemption was also moved, which was dismissed. Learned counsel further submits that the petitioner was not well aware about the terms and conditions of the bail and for a short period, he visited abroad. There was no intention on the part of the petitioner to

avoid the Court proceedings as immediately he came back. Learned counsel also submits that it is merely a negligence and the petitioner undertakes to abide by all the terms and conditions to be imposed by this Court or by the trial Court.

Learned counsel for the respondent-CBI has opposed the submissions made by learned counsel for the petitioner on the ground that it was clearly mentioned in the order of bail that prior permission of the Court is required which has been violated and due to that reason, bail/surety bonds of the petitioner have been cancelled. Learned counsel for CBI further submits that the petitioner does not deserve any concession of bail as he cannot be said to be a person, who does not know the terms and conditions of the order as when it was clearly mentioned.

Heard arguments of learned counsel for the petitioner as well as learned counsel for CBI and have also perused the order of granting bail as well as cancellation of bail.

Undoubtedly, it was specifically mentioned in the order granting bail that accused shall not leave the country without prior permission of the Court. It was also mentioned that the petitioner will attend the Court proceedings regularly and will not seek any unnecessary adjournment.

Keeping in view the conduct of the petitioner as he came back immediately after a period of 20 days, it appears that there was no intention on the part of the petitioner to remain absent. It can be an inadvertent mistake/lapse on his part. Moreover, the petitioner is NRI and ready to abide by all terms and conditions to be imposed by this Court or by the trial Court.

Same issue was there before the Kerala High Court in ***Mahesh vs. State of Kerala, 2011 (1) Cri.C.C. 834*** wherein the condition of bail was violated and due to absence of the accused-petitioner, bail was cancelled. The relevant portion of said judgment is reproduced as under: -

“20. To cancel the bail under section 437(5) or 439(2) of the Code very cogent and overwhelming reasons are also to be stated. The Court shall not cancel bail in a routine manner, under section 437(5) or 439(2) of the Code, as per law. This is the settled position of law. But, the position under Section 446-A of the Code is totally different. If the Magistrate Court is satisfied that there is breach of condition of bail bond and thereby, forfeiture of the bond, the bond automatically stands cancelled under Section 446-A of the Code.

*21. However, a mere violation of condition in the bail order will not lead to automatic cancellation of bail bond under Section 446-A of the Code. Apart from violation of condition in the bail order, the Court must also be satisfied that the bond is forfeited then alone, bail bond would stand cancelled and the accused can be proceeded against. It is the forfeiture of the bail bond which is crucial under Section 446-A of the Code. If the breach of condition is not wilful and is due to reasons beyond his control, it cannot be said that there is forfeiture of bond. The question is dealt with in ***Rajan v. State of Kerala, 2006 (4) KLT 429*** and it is held thus:*

"A bond for appearance can be said to be forfeited, only

if there is a wilful default on the part of the accused in not appearing before the Court. It is needless to say that an accused can be absent in Court due to various reasons on a particular occasion. When the counsel files an application, it follows that the accused was vigilant and he had taken steps to instruct his counsel to file an application. Such an accused cannot be said to have forfeited the bond by reason of any wilful default. It is only in cases where there is wilful default on the part of the accused to appear in Court, forfeiture of bond will follow and penalty will incur."

22. In *State of Kerala v. Anil Kumar*, 2005 (4) KLT SN 59, referring to cancellation of bail, this Court held thus: "*an innocent violation of any condition imposed by the Court will not ipso facto lead to cancellation of bail under section 439(2) Criminal Procedure Code. The crucial and vital question is whether there has been deliberate, contumacious and unjustified infraction of the conditions imposed by the Court". It is needless to say that if the Court cannot cancel bail, if violation of condition is not wilful or deliberate, it is only reasonable to hold that such violation (which is not wilful or intentional) shall also not lead to an automatic cancellation of bail bond under Section 446-A of the Code."*

In the present case also, the bail/surety bonds have been cancelled as the petitioner left India without prior permission of the Court.

An application for exemption from personal appearance was also moved, which was dismissed. The petitioner is NRI and he went abroad without seeking any permission from the Court, which has been stated to be inadvertent as he did not go through the terms and conditions of bail but the circumstances were beyond his control. The petitioner immediately came back to India and came to know that his bail bonds have been cancelled. There was no intention on his part to remain absent or to avoid the Court proceedings. The petitioner remained ill when he was abroad, remained there for a period of 20 days and could not come back immediately.

Accordingly, the present petition is allowed and the petitioner is directed to surrender before the trial Court on the next date of hearing i.e., 19.07.2018 by furnishing an undertaking before the trial Court that he will attend the Court proceedings regularly and will not leave the country without prior permission of the Court and abide by all terms and conditions to be imposed by the trial Court. He is directed to be released by the trial Court by furnishing adequate surety/bail bonds to its satisfaction subject to payment of cost of ₹25000/- to be deposited with the trial Court.

A copy of this order be supplied to learned counsel for the petitioner under the signatures of Special Secretary of the Court.

18.07.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned Yes

Whether Reportable Yes