

103

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16983-2019

Date of decision-12.04.2019

Balbir Kaur @ Rajni

....Petitioner

Vs.

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. S.K.Daaria, Advocate for the petitioner.

MANOJ BAJAJ, J.

This petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in case FIR No.51 dated 26.08.2016 registered under Section 379 of Indian Penal Code (Charges framed under Section 379-A IPC) at Police Station GRP, Gurugram, District Gurugram, as her bail stands cancelled by the trial Court on account of her absence vide order dated 22.01.2019.

Learned counsel for the petitioner contends that the petitioner being a resident of District Patiala, was unable to attend the date of hearing in person on account of her illness on the said date and the requisite application was made seeking exemption from personal appearance. It is pointed out that the counsel of the petitioner was present, however, the Court refused to grant exemption and proceeded to cancel the bail of the petitioner.

The petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail, which may not be maintainable as the petitioner had been granted the concession of regular bail previously. At this stage, learned counsel for the petitioner makes a prayer for considering the petition under Section 482 Cr.P.C and further craves indulgence of this Court to put a challenge to the order dated 22.01.2019 passed by Additional Sessions Judge, Gurugram whereby her bail was cancelled. The petition is treated under Section 482 Cr.P.C for setting aside the order dated 22.01.2019.

Notice of motion.

At the asking of the Court, Mr. Sukhdeep Parmar, DAG, Haryana accepts notice on behalf of the respondent-State. A complete copy of the paper book has been furnished to the learned State counsel, in the Court.

Learned counsel for the petitioner contends that the petitioner after grant of regular bail had been appearing before the Court regularly except on 22.01.2019, as she was prevented by her illness to appear in person before the Court.

At times, the complainant or accused can be prevented by a sufficient reason to put an appearance before the Court on a given date and every such absence necessarily cannot be treated as a wilful or deliberate.

In the present case, FIR was registered in the year 2016 and the Court has proceeded to pass an extreme order of cancellation of bail only on account of absence of the petitioner which was well explained by the counsel representing her. There are no reasons given in the impugned order

by the Court, to disbelieve the stand of illness of the accused. It needs to be borne in mind that merely because a person is an accused before the Court, his/her right to life can not be construed to be suspended. It is desirable that the Court should record necessary satisfaction before passing such an harsh order, which is adverse to the interest of the accused and must record the conduct for absence. This Court does not find any reason to disbelieve the explanation offered by the petitioner and the same is accepted.

In view of the above, impugned order dated 22.01.2019 (Annexure P-2) is set aside and the petitioner is allowed to remain on the same bail bonds and surety bonds.

Disposed off.

(MANOJ BAJAJ)
JUDGE

12.04.2019

vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No