

Sr. No.138

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

**CRM-M-34969-2019(O&M)
Date of decision:27.08.2019**

Raj Bansal

.....Petitioner

versus

State of Punjab and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Vishal Gupta, Advocate and
Mr. Aayush Gupta, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Present petition has been filed for quashing of Order dated 14.08.2019(Annexure P-12) passed by the Court of Sessions Judge, Ludhiana.

It is submitted by learned counsel for the petitioner that matter in the case pertains to the year, 2007. The petitioner was granted bail pending trial by the Trial Court vide Order dated 14.03.2011. Thereafter, the petitioner had been regularly appearing before the Court. In the year 2014, the petitioner had filed the petition i.e. CRM-M-30356-2014, challenging the proceedings, pending before the Trial Court. In the said petition, vide Order dated 03.09.2014, this Court had directed the Trial Court to adjourn the trial of the case beyond the date fixed before this Court; and that Order stands even today.

Still further, it is submitted that unfortunately, the wife of the petitioner got serious ailment; requiring treatment from super specialty qualified Doctors; from United States. Therefore, the petitioner had to go abroad to ensure the treatment for his wife. Even during this period, except

one; no date was fixed before the Trial Court. Therefore, the petitioner never remained absented from the Court proceedings even during this period. However, on 15.12.2018, one date of hearing was fixed before the Trial Court, when the petitioner happened to be abroad. Accordingly, the petitioner had requested his counsel to move necessary application for seeking exemption from the personal appearance before the Trial Court. However, due to lack of proper details, probably, the counsel did not disclose the correct reason of the petitioner going abroad. The Trial Court had been benevolent enough to allow that application. After return from abroad, the petitioner again appeared before the Trial Court. Hence, it is submitted that there was no default on the part of the petitioner; in appearance before the Trial Court.

However, taking advantage of the fact that the petitioner had to go abroad and the petitioner had not sought prior permission from the Court before leaving country, the complainant had filed an application for cancellation of the bail granted to the petitioner; on the ground that the petitioner went abroad without permission of the Court, and thus, violated the conditions with which the bail was granted to the petitioner.

It is submitted by the counsel for the petitioner that this application was filed by the complainant only to harass the petitioner; because the complainant is nobody but the land-lord of the petitioner, with whom the petitioner is already having a dispute regarding eviction of the premises occupied by the petitioner. The petitioner again appeared before the Trial Court and filed reply to the application and explained the entire situation before the Trial Court. However, the Trial Court accepted the application filed by the complainant and cancelled the bail granted to the

petitioner. It is submitted by the counsel that although the petitioner may have committed some bonafide mistake; by not seeking prior permission from the Trial Court before going abroad, however, in the given facts and circumstances of the case, where the petitioner has not absented even on single date, the Order canceling the bail granted to the petitioner is not justified at all. It is further submitted by the counsel for the petitioner that the petitioner undertakes to regularly appear before the Trial Court, as he had been appearing earlier. Additionally, the petitioner undertakes not to leave the country; again; without prior permission of the Court. Hence, it is prayed that Order dated 14.08.2019(Annexure P-12) passed by the Court of Sessions Judge, Ludhiana be set aside and the bail earlier granted to the petitioner be ordered to be restored.

Notice of motion.

On asking of the Court, Ms. Amarjit Kaur Khurana, DAG, Punjab accepts notice on behalf of the State.

Mr. Harparteek S.Sandhu, Advocate, who is present in Court, accepts notice on behalf of the complainant-respondent No. 2.

Learned counsel for the petitioner(s) is directed to hand over a copy of the petition to the opposite counsels.

Learned counsel for the complainant-respondent No.2 submits that the petitioner had made attempt to cheat the Court. He committed double default, firstly, by going abroad without permission from the Court and secondly, by moving an application on 15.12.2018 by giving wrong reason; for seeking exemption from personal appearance before the Court. It is further submitted that the petitioner had not gone abroad only once, rather, he had gone there earlier also. Therefore, the Trial Court has rightly

taken note of the fact that earlier also the petitioner had not taken permission from the Court; before leaving the country. It is further submitted by the counsel that the petitioner had availed the concession of anticipatory bail earlier and in that Order; there was condition that the petitioner would not leave the country without the permission of the Court. Accordingly, it is submitted that if at all the petitioner had to go abroad, without permission of the Court then he should have sought modification of the order of grant of anticipatory bail to the petitioner.

After hearing the learned counsel for the parties and having perused the paper book, this Court finds substance in the argument of learned counsel for the petitioner. It is not even disputed that the petitioner has never absented from the proceedings of the Trial Court even on a single date. The petitioner is facing agony of the trial since the year 2011 and he is bound down by the conditions of the bail; from the year 2011. Although, it has come on record that the petitioner could not appear before the Court on 15.12.2018, however, for that date an application was duly filed by the petitioner for exemption from personal appearance, and the same was allowed by the Trial Court as well. Therefore, cancelling the bail granted to the petitioner for a default in retrospect would be disproportionately harsh against the petitioner.

Otherwise also; although the petitioner had not sought permission from the Court before leaving country, however, the petitioner can be granted benefit of his bonafide impression, though may be misconceived, that the order passed by the Trial Court at the time of granting the regular bail, contained no specific condition that the petitioner would be required to seek prior permission from the Trial Court before

leaving country.

This Court can also not lose sight of the fact that it is this Court who has directed the Trial Court to adjourn the proceedings beyond the date fixed before this Court; and that order still stands operative even today. Hence, even if the petitioner travelled abroad without permission of the Court; that happened during the period when nothing substantial could have happened. On this account also, the petitioner can be granted benefit of doubt that he perceived the facts in a way that he may not be required to personally appear before the Trial Court; during the interregnum.

In any case, the petitioner went abroad only during that period when there were no proceedings undertaken before the Trial Court due to the interim order passed by this Court. Therefore, the fact of the petitioner going abroad without prior permission of the Court, though may be a bit deflection on the part of the petitioner, however, the same is not that much material, particularly in view of the fact, that even after coming back to country, the petitioner has again been regularly appearing before the Trial Court. After all personal liability of an individual is so sacrosanct and constitutionally guaranteed that it can not be bartered for peanuts.

Although the counsel for the complainant has submitted that the petitioner should have sought modification of the Order of the anticipatory bail, if he intended to go abroad without leave from the Court, however, this Court finds this argument to be totally irrelevant. It is not that the petitioner is claiming; as a matter of right; to go abroad without permission of the Court. It is only under the above-stated bonafide impression and the inadvertence that the petitioner happened to have travelled abroad without permission of the Court. Otherwise also, the Order

of the grant of anticipatory bail ceased to be operative from the date the petitioner was granted regular bail by the Trial Court. It is not even disputed that there was no explicit condition in the Order granting regular bail to the petitioner, that he will not leave the country without the permission of the Court.

Still further, the petitioner has now specifically undertaken before this Court that petitioner would not, again, leave the country without the prior permission of the Court and that the petitioner would continue to appear before the Trial Court without fail.

In view of the above, present petition is allowed. The impugned order dated 14.08.2019(Annexure P-2) is set aside. Trial Court is directed to restore the bail earlier granted to the petitioner.

27th August, 2019
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*