

103

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50527-2019

Date of Decision: 28.11.2019

Raj Kumar Nagar

.. Petitioner

Vs.

Brahampal

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Aditya Jain and
Mr. Junaid Singh Bakshi, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

Petitioner-Raj Kumar Nagar has filed this petition under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in case bearing No.CRA-256-2019 titled as “Raj Kumar Nagar Vs. Braham Pal”, pending in the Court of Id. Sessions Judge, Faridabad for 17.12.2019, whereby his bail was cancelled, bonds were forfeited to the State and his warrant of arrest has been issued vide order dated 30.10.2019.

Learned counsel for the petitioner contends that on 30.10.2019, the petitioner could not appear as he was attending his injured son and, therefore, his absence was bona fide and unintentional. He submits that the petitioner was regularly appearing before the appellate Court and is willing to pursue his appeal.

When learned counsel was confronted with the maintainability of the petition, he makes a prayer to treat the petition under Section 482 Cr.P.C. The prayer is accepted.

Considering the nature of relief prayed for, this Court is not

inclined to issue notice of motion to the respondent as it may cause

unnecessary burden upon him. However, it shall be open for the respondent to seek recall of this order in case the petitioner has misled this Court.

Perusal of the paper book reveals that on 24.10.2019, the appellate Court extended the concession of exemption from personal appearance to the petitioner as his son had allegedly met with an accident. Thereafter, the appeal was fixed for 30.10.2019. On the said date, the petitioner did not appear, however his counsel was present. It was apprised by his counsel that he could not make contact with the petitioner. The appellate Court, therefore, proceeded to construe the absence as deliberate and cancelled his bail and forfeited his bail bonds and passed the extreme order of cancellation of bail.

Many a times, the accused or his counsel can be prevented by sufficient reasons to put an appearance before the Court on a given date and every such absence cannot be necessarily construed as a deliberate and willful absence. The explanation offered for non appearance before the appellate Court appears to be justified and, therefore, the same is accepted.

Considering the above, the impugned order dated 30.10.2019 and subsequent issuance of warrants (if any) are set aside and the petitioner is allowed to remain on the same bail bonds and surety bonds.

Disposed off.

28.11.2019
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No