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

CRM-M-34953-2021

Date of Decision: 07.09.2021

Kamaljit Singh and another**.. Petitioners****Vs.****State of Punjab****..Respondent****CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ**

Present: Mr. Rajiv Joshi, Advocate for the petitioners.

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Manoj Bajaj, J. (Oral)

Petitioners have filed this petition under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in case FIR No.0048 dated 26.03.2017 under Sections 15, 18, 21, 22 and 29 NDPS Act, 1985, registered at Police Station Adampur, who apprehend their arrest at the hands of police, pursuant to the cancellation of their bail vide order dated 28.07.2021 (Annexure P-5), passed by the trial Court.

Learned counsel has invited the attention of the Court to the bail orders dated 13.10.2017 (Annexures P-2 and P-3) respectively, whereby the accused/petitioners were granted the concession of regular bail. According to him, the petitioners, who were regularly appearing before the trial Court, absented on 28.07.2021, and the trial Court proceeded to cancel their bail and forfeited the bail bonds. He has further submitted that on 07.07.2021 (Annexure P-4), the case was adjourned by the trial Court following the directions passed by this Court in relation to the restrictive functioning of the Courts because of breakout of the pandemic COVID-19.

He has argued that the petitioners on 28.07.2021 remained under the same

impression and, therefore, did not appear, however, their counsel had appeared on their behalf. He submits that the absence was not intentional and as the petitioners are willing to join the trial proceedings before the trial Court, therefore, they be released on anticipatory bail.

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.

Notice of motion.

At this stage, Mr. Ramandeep Sandhu, Sr. DAG, Punjab, accepts notice on behalf of the respondent-State and opposed the prayer on the ground that vide order dated 07.07.2021, a specific direction was issued by the trial Court regarding their presence on the next date of hearing. According to him, since the clear direction was issued, there was no occasion for them to presume that their presence is not necessary on the said date of hearing. However, it is not disputed that the case is fixed for 14.09.2021.

A perusal of the order dated 28.07.2021 (Annexure P-5) reflects that the trial Court proceeded to pass the extreme order of cancellation of bail for the absence of the accused on the said date, who were on regular bail since 13.10.2017. At 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 by petitioners for non appearance before the trial Court appears to be justified and therefore, the same is accepted.

Apart from the above, this Court is of the opinion that the

impugned order has been passed recently and in case, the petitioners are allowed to join the trial proceedings, no prejudice would be caused to the prosecution.

Consequently, the impugned order dated 28.07.2021 (Annexure P-5) is set aside subject to appearance of the petitioners before the trial Court on or before the next date of hearing i.e.14.09.2021 and they are allowed to remain on the same bail bonds and surety bonds. In the event of non-compliance of this order, the order dated 28.07.2021 would remain intact.

Disposed off.

07.09.2021
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No