

CRM-M-8779-2022

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

CRM-M-8779-2022

Reserved on: -29-04-2022

Pronounced on: 17-05-2022

Asif Fazlani

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Anmol Partap Mann, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

ANOOP CHITKARA, J.

1. Feeling aggrieved by the dismissal of exemption application from personal appearance and cancelling his bail bonds and further issuing non-bailable warrants, the accused has come up before this Court under Section 482 Cr.P.C for setting aside the order dated 11.01.2022 (Annexure P-10) and also for transfer of the complaint from the concerned Court with the allegations of bias and prejudice against the petitioner.

2. Vide order dated 15.09.2021 (Annexure P-2), learned Additional Sessions Judge, Gurugram, dismissed the application filed by the accused-Asif Fazlani/accused No.5 for personal exemption. The reasons for such exemption was that Asif Fazlani was suffering from issues with the spine and was unable to travel from Mumbai to Gurugram. However since no medical documents were annexed to support the application, as such, learned Court dismissed the same. Consequently, the learned Court also cancelled the bail bonds and forfeited the same to the State and issued non-bailable warrants.

3. In paragraph 16 of the petition, the accused offers the following explanation:

“That it is submitted that the warrants of arrest have been issued directly against the Petitioner without following due process of law. By arbitrarily cancelling the bail of the Petitioner, the learned Additional Sessions Judge has effectively remanded the case back to the initial stage laying to waste the entire progress in the matter till date. The learned Additional Sessions Judge failed to appreciate that the Petitioner is a permanent resident of Mumbai and was facing real and genuine difficulties in view of the third wave of COVID-19 pandemic, especially in Mumbai and Haryana, as a result of which it was not possible for him to remain personally present before the learned

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Court. Nevertheless, he appeared through his Advocate. However, without taking into consideration the serious circumstances, the Learned Sessions Court has once again cancelled the bail of the Petitioner and ordered issuance of a non-bailable warrant against him. In such circumstances, taking away the protection awarded to the Petitioner by cancelling his bail and then demanding his appearance through warrant of arrest is completely arbitrary and uncalled for, especially during these Covid times when there are clear guidelines from the Hon'ble Apex Court as well as other authorities to conduct proceedings virtually as far as possible. The entire manner in which the proceedings are being conducted by the Trial Court clearly and conclusively establish and prove beyond doubt that the Learned Sessions Judge is prejudiced and biased against the present Petitioner and has a pre-disposed mind, which will emerge at the final stage of judgement. It is trite principle of jurisprudence that "Justice must not only be done, but must be seen to have been done". In the instant case, without prejudice to the fact that the Petitioner and his company have not committed any offence at all, the Learned Additional Sessions Judge seems to have made up his mind as to the guilt of the Petitioner without the evidence being led at all and has issued on atleast 2 separate occasions, non-bailable warrants against the Petitioner. It is clearly evident from the conduct of the Learned Sessions Judge that he has made up his mind and is going to convict the Petitioner irrespective of the evidence at hand or the cogent defence which is being put up by the Petitioner. It is submitted that if the proceedings are permitted to be continued before the same Sessions Court, then in such event, there will be great travesty of justice and the valuable rights of the Petitioner to a free and fair trial will be defeated. It is respectfully submitted that in the event that the matter is transferred from the present Sessions Judge to any other Sessions Court, the same would assuage the legitimate concerns and apprehensions of the petitioner and would ensure a fair trial. It is submitted that no adverse prejudice would be caused to any party at all in the event of the transfer of the said trial to any other Court."

4. Without adjudicating the maintainability of this petition under section 482 CrPC, and leaving that question open; given the explanation offered by the accused coupled with the facts and circumstances peculiar to this case, a balanced approach would work as an incentive, a catalyst, speeding up the process, and bringing the guilty to Justice and Justice to the guilty. The petition is allowed to the extent mentioned in this order and with the following conditions.

5. **There shall be a stay of the petitioner's arrest in the case mentioned above for ten days; however, if the petitioner fails to appear within this time of 15 days, then stay on arrest shall stand vacated without any further reference to this court. It is clarified that if the petitioner appears before the concerned court, then the impugned order dated 11.01.2022 (Annexure P-10), issued by the concerned court against the petitioner in the matter mentioned above shall stand quashed, warrants canceled, and bonds restored. However, in case the Id. trial court so desires, it may ask the petitioner to furnish fresh bail bonds, and in such an eventuality, the petitioner shall execute a bond for attendance in the concerned court to its satisfaction.**

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6. **Within 15 days from today**, the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the concerned Police station. The petitioner shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating officer asks to share the location, the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, calls nor format the phone without permission of the concerned SHO/I.O. This condition shall continue till the completion of the trial or closure of case, whatever is earlier.

7 **Within 15 days from today**, the petitioner shall deposit a sum of rupees ten thousand in 'High Court Lawyers Welfare Fund,' Account number 65018692589, SB, IFCI code SBIN0050306, Branch Code 50306, Branch Address State Bank of India, High Court Branch, Sector 1, Chandigarh. After depositing, the petitioner shall file the proof of deposit, before the concerned court and send its copy alongwith a copy of this order to the Secretary, Punjab & Haryana High Court Bar Association, either in physical or electronic mode.

8. **Within 15 days from today**, the petitioner shall deposit a sum of rupees ten thousand in 'High Court Lawyers Welfare Fund,' Account number 65018692589, SB, IFCI code SBIN0050306, Branch Code 50306, Branch Address State Bank of India, High Court Branch, Sector 1, Chandigarh. After depositing, the petitioner shall file the proof of deposit, before the concerned court and send its copy alongwith a copy of this order to the Secretary, Punjab & Haryana High Court Bar Association, either in physical or electronic mode.

This order is subject to the petitioner appearing before the concerned court with in ten days from today.

9. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

10. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

11. *There would be no need for a certified copy of this order, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

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Petition allowed to the extent mentioned above. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

17.05.2022
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Whether speaking/reasoned:	Yes
Whether reportable:	No.