

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

Sr. No. CRM-M-36490-2022 (O&M)
Date of decision : 15.9.2022

Major Singh

.....Petitioner(s)

VERSUS

State of Punjab

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Gagandeep Singh Wasu, Advocate for the petitioner

Mr.MS Atwal, DAG, Punjab

Complainant in person

AMAN CHAUDHARY, J.

The present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 19.7.2022 (Annexure P5), whereby the bail of the petitioner was cancelled and non-bailable warrants were issued for 31.8.2022 in case DDR No. 51 dated 18.1.2021, registered under Sections 325/323/34 IPC in FIR No. 212, dated 17.12.2020, under Sections 384/506 IPC, registered at Police Station Navi Baradari, Jalandhar.

Learned counsel for the petitioner submits that after the challan was presented in the Court of JMIC, Jalandhar, the petitioner was granted regular bail on his furnishing bail/ surety bonds of Rs.50,000/- vide order dated 9.3.2022, Annexure P4. While referring to para 6 of the petition, it is further submitted that in view of old age of the mother of the petitioner and she having undergone a heart surgery in the month of January, 2022 in

Canada, he got his tickets booked for going to Canada on 20.6.2022 and took the flight on 24.6.2022 with the return date of tickets for 6.8.2022, Annexure P8. He further refers to para 8 of the petition to submit that though, the petitioner had been regularly appearing before the learned trial Court but mistook the date of hearing as 15.8.2022 instead of 15.7.2022, for which reason, he could not appear before the Court on the aforesaid date, due to which, vide order dated 19.7.2022 (Annexure P5) his bail was cancelled and non-bailable warrants were issued against him for 31.8.2022. At this stage, learned counsel further refers to order dated 9.3.2022, Annexure P4, granting regular bail to the petitioner, to submit that there were no conditions whatsoever imposed therein, more particularly with regard to his non leaving the country or seeking prior permission therefor, in view of the fact that offences against him were bailable. He further submits that in the Form No.45 i.e. Bail bonds, the sample of which was referred to from the Cr.P.C., wherein there is no mention of any condition in bailable offences that the accused has to take prior permission of Court to travel abroad. He further submits that there was no intention of the petitioner to evade the proceedings before the trial Court when he had gone abroad as the reason of his going abroad was the ill health of his mother and his absence from the proceedings on the date fixed i.e. 15.7.2022 was only on account of the mistaken belief of the date being 15.8.2022 instead of 15.7.2022 and none other. He further submits that in fact only keeping in view the next date of hearing as 15.8.2022, that the petitioner had accordingly booked his return tickets for 6.8.2022, however, on 19.7.2022 itself, non-bailable warrants came to be issued. He further contends that the

petitioner is ready and willing to surrender before the trial Court and apply for bail, for which he prays for grant of only one opportunity, which may even be subject to imposition of costs or any other conditions, which this Court may deem appropriate to impose. In support of his submissions, he relies on **Naveen Rao vs. Central Bureau of Investigation (CBI) ACB, Chandigarh**, CRM-M-29461-2018, decided on 18.7.2018, **Dimple Kumar vs. State of Punjab** 2017(1) RCR (Crl.), 602 and '**Sonu Sharda vs. State of Punjab**' CRM-M-16648-2020 decided on 1.6.2020.

Per contra, learned counsel for the State as also the complainant appearing in person, submit that there was no cause for the petitioner to go abroad, in view of the averments made in para 6 of the petition as the surgery, if any, of the mother of the petitioner had already taken place in January, 2022, whereas the petitioner chose to go to Canada on 24.6.2022, thus, he had a lot of time at hand to take prior permission from the Court, there being no such urgency. They both submit that the averments made in paras 7 to 10 of the petition to the effect that the petitioner was not in contact with his counsel is not believable. Thus, the petitioner has not approached the Court with clean hands. The complainant relies on **Thiruvananthapuram vs. State of Kerala represented by Public Prosecutor, High Court of Kerala and others** 2020 (4) KLT 703.

Heard the learned counsel for the parties at considerable length.

This Court is considering *bonafide*, if any, of the petitioner, and justification of his absence, if at all.

First aspect:-

It is apposite to notice that the non-bailable warrants had been issued for 31.8.2022 and the present petition was filed by the petitioner on 16.8.2022, which reflects his *bonafide*.

Justification:-

The reason as given by the petitioner in para 6 of the petition that it was only on account of his mother, who lives in Canada having undergone the heart surgery in the month of January, 2022, the petitioner had planned to visit to Canada; return flight of which was booked on 6.8.2022, Annexure P8, which was a date prior to the date noted by him i.e. 15.8.2022, which though later was found to have been mistakenly noted instead of 15.7.2022 that led to his absence from the proceedings before the trial Court. The explanation so offered by the petitioner appears to be genuine.

Discussion and analysis:-

As is apparent, the petitioner is stated to involved are 325, 323, 34 IPC, which are bailable offences and triable by the Court of Magistrate. The petitioner had been granted regular bail vide order dated 9.3.2022, Annexure P4, wherein no conditions were imposed by the trial Court much less to seek prior permission to travel abroad. The said order reads thus:-

“Copies of challan has been supplied to accused free of cost. Offence are being bailable, the accused is admitted to bail on furnishing bail bonds and surety bonds in the sum of Rs.50,000/- with one surety in the like amount. Personal bonds in the sum of Rs.50,000/- furnished, which are

accepted and attested. Now to come up on 02.05.2022 for furnishing the bail bonds and surety bonds and for consideration on charge.”

However, the petitioner having absented on 15.7.2022, the trial Court cancelled his bail and issued non-bailable warrants for 31.8.2022, vide Annexure P5, to secure his presence.

A Coordinate Bench of this Court **Naveen Rao's case** (supra) has held thus:-

“In the present case also, the bail/surety bonds have been cancelled as the petitioner left India without prior permission of the Court. An application for exemption from personal appearance was also moved, which was dismissed. The petitioner is NRI and he went abroad without seeking any permission from the Court, which has been stated to be inadvertent as he did not go through the terms and conditions of bail but the circumstances were beyond his control. The petitioner immediately came back to India and came to know that his bail bonds have been cancelled. There was no intention on his part to remain absent or to avoid the Court proceedings. The petitioner remained ill when he was abroad, remained there for a period of 20 days and could not come back immediately.”

Further in case of **Dimple Kumar** (supra), a Coordinate Bench has held thus:-

“2. The petitioner herein was arrested under the said FIR on 11.04.2015. Thereafter, a petition bearing CRM-M No. 15196 of 2015 was filed in

this Court in which the petitioner was released on regular bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Ludhiana by an order dated 14.05.2015. Thereafter, the petitioner herein did not put in appearance before the trial Court on the date so fixed i.e. 25.10.2016 and sought exemption on the ground that he is suffering from viral fever. The Court took notice of the fact that the petitioner herein had sought similar exemptions on several occasions and came to the conclusion that the accused is habitual in seeking exemptions and direction was issued to ensure his presence failing which serious view would be taken against him. Since the petitioner did not put in appearance as directed by an order dated 12/26.09.2016 and preferred an application seeking exemption on the ground that he is suffering from viral fever, the Court came to conclusion that the ground of exemption did not seem to be genuine. Resultantly, the bail bonds of the petitioner herein were cancelled and it was ordered that he be summoned through non-bailable warrants for 15.11.2016.

3. x xx

4. In view of the fact that the petitioner is willing to furnish an undertaking, without expressing any opinion on the merits of the case, the impugned order dated 25.10.2016 is set aside. The petitioner herein is directed to approach the trial Court within a week and move an application to furnish the said undertaking. On doing so, the petitioner be enlarged on bail.”

Adverting to the facts of the present case, no condition to seek prior permission from the Court had been imposed while granting bail to the petitioner, which is evident from the order Annexure P4.

The very purpose of issuance of summons, warrants etc. is to secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

In case one opportunity is granted to the petitioner for him to surrender and appear before the trial Court in order to join the proceedings, no prejudice shall be caused to the complainant, rather his joining the proceedings would help in expediting the trial, which is in the interest of the parties.

The judgment referred to by the complainant is distinguishable as the same relates to grant of anticipatory bail, the scope of which is entirely different from the petition under Section 482 Cr.P.C.

Conclusion:-

This Court while noticing the *bonafide* of the petitioner; explanation given for his absence being justified; the object to be achieved being to secure the presence of the petitioner in the proceedings; expedition of trial and its early culmination being in the interest of the parties; in order to meet the ends of justice; judgments referred to above being applicable to the instant case, is allowing this petition, though deeming it appropriate to impose certain conditions for meticulous adherence at the hands of the petitioner.

In view of the forgoing conclusion and in the peculiarity of the facts and circumstances of the case, as also held by the Coordinate Bench

of this Court in the cases of **Naveen Rao** (supra) and **Dimple Kumar** (supra) and in the interest of justice, the impugned order dated 19.7.2022, Annexure P5, is hereby set aside.

This petition is thereby allowed. However, the same shall be subject to payment of costs of Rs.15,000/- to be deposited with the trial Court, which it will release to the complainant forthwith. The petitioner is directed to surrender before the trial Court on or before 14.10.2022 and furnish his fresh bail/ surety bonds. On so doing, the trial Court shall release him on bail by imposing heavy surety to its satisfaction. He is also directed to furnish an undertaking by way of his affidavit that he will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. He shall also surrender his passport and will not leave the country without prior permission of the Court or the trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

Before parting with this order, it is made abundantly clear that in case the petitioner does not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

Pending application(s), if any, shall stand disposed of accordingly.

15.9.2022
gsv

(**AMAN CHAUDHARY**)
JUDGE

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