

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

CRM-M-40134-2022

Date of Decision: September 09, 2022

RAKESH KUMAR

....Petitioner(s)

VERSUS

STATE OF PUNJAB

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Vipin Kumar, Advocate for
Mr. Ravi Malhotra, Advocate
for the petitioner.

Mr. Kamalpreet Bawa, AAG, Punjab.

AMAN CHAUDHARY, J.(ORAL)

The present petition has been filed under Section 482 Cr.P.C. for quashing of the order dated 14.07.2022 (Annexure-3) vide which learned trial court, (learned Additional Sessions Judge Jalandhar) has cancelled the bail, granted to the petitioner and non-bailable warrant has been issued, in case bearing FIR No.201, dated 29.12.2018 under Section 15 of NDPS Act 1985 and Section 29 of NDPS Act 1985, added later on, registered at Police Station Bhogpur, District Jalandhar.

Learned counsel for the petitioner submits that the FIR against the petitioner was lodged on 29.12.2018. He was granted bail on 06.02.2019 by the trial Court and charges had been framed on 27.08.2019 and thereafter the case was fixed for prosecution evidence. He further submits that after framing of charges, petitioner along with co-accused was regularly appearing before the trial Court but prosecution failed to examine even a single witness till today. The petitioner was regularly appearing before the trial Court, except on 14.07.2022, on which date he was unable to

appear on account of the fact that his previous counsel, inadvertently noted down the date of hearing as 28.07.2022 instead of 14.07.2022 and on the said date his bail was cancelled and non-bailable warrants were issued against him for 16.08.2022. Thereafter, he filed an application for grant of anticipatory bail before learned trial Court which was dismissed vide order dated 05.08.2022 on account of being not maintainable. Learned counsel for the petitioner, therefore, submits that his non-appearance was neither intentional nor deliberate but had occurred due to the above said reason.

Learned counsel prays that the petitioner undertakes to appear on each date of hearing in case one opportunity be granted to him to appear and join the proceedings before the learned Trial Court, subject to costs. In support of his arguments learned counsel for the petitioner relies upon judgment dated 19.01.2022, passed by Coordinate bench of this Court in CRM-M-968-2022 titled as “*Manpreet Singh Vs. State of Punjab*” and in CRM-M-38277-2022 dated 26.08.2022, in the case of “*Surjit Singh Vs. State of Punjab*”.

On instructions from ASI Avtar Singh, learned State counsel submits that there are three other cases pending against the petitioner. He, however, submits that an undertaking should be given by the petitioner before the learned Trial Court that petitioner will continue to appear.

Heard counsel for the parties.

No order prejudicial to the rights of complainant is being proposed to be passed by this Court, thus, there is no requirement for him to be arrayed as a party respondent.

The reason that has come forth in this case is that his counsel noted down the date 28.07.2022 instead of 14.07.2022 as the date of hearing, which led to his non-appearance. It is the positive case of the petitioner that he had otherwise surrendered and was regularly appearing as it has been stated in para 5 of the petition, which fact has not been so disputed by the learned State counsel. However, on account of default of learned counsel, a reliance can be placed on a case of ***Rafiq and another vs Munshilal and another***” by the Hon'ble Supreme Court of India, reported as AIR 1981 SC 140, which reads thus:-

“What is the fault of the party who having done everything in his power expected of him, would suffer because of his advocate The problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanour of his agent We cannot be a party to an innocent party suffering injustice merely because of his chosen advocate defaulted.”

A coordinate bench of this Court, in ***Manpreet Singh's*** case (*supra*), which has been relied on by the learned counsel for the petitioner, had in somewhat similar circumstances also set aside the order of issuance of non-bailable warrants in a case where the petitioner could not cause appearance before the trial Court.

It is appropriate to notice yet another fact that vide order dated 14.07.2022, the non-bailable warrants of the petitioner have been issued to the petitioner for 16.08.2022 and the present petition has been filed by him on 16.08.2022 which is the date of appearance before the trial Court, reflects his *bonafide*. At times, the accused can be prevented by sufficient reasons, for his non-appearance before the Court on the given date and as

such cannot necessarily be construed as a deliberate and willful absence. The explanation offered by the petitioner for his non-appearance in this case before the trial Court seems justified. Moreover, the very purpose of issuance of non-bailable warrants, being, to secure the presence of the petitioner.

In view the peculiarity of the facts and circumstances of the case and the judgment passed by the Hon'ble Supreme Court of India and a Coordinate Bench of this Court, as referred to above, the present petition is allowed and the impugned order dated 14.07.2022 (Annexure P-3) is set aside, subject to costs of Rs.5000/- to be deposited by the petitioner with the Poor Patient's Welfare Funds, PGIMER, Chandigarh. In case the petitioner appears before the trial Court within a period of 30 days from today, the trial Court is directed to release him on bail subject to his furnishing fresh bail/surety bonds to the satisfaction of the concerned trial Court and the petitioner giving an undertaking by way of his affidavit to the trial Court that he would appear on each and every date of hearing, unless his personal appearance is specifically exempted by the Court.

It is however, made clear that if the aforesaid conditions are not complied with by the petitioner, within the stipulated period, in that eventuality the present petition shall be deemed to have been dismissed, with no further reference to this Court.

09.09.2022*Sangeeta***(AMAN CHAUDHARY)
JUDGE***Whether reasoned/speaking: Yes/No**Whether reportable: Yes/No*