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

CRM-M-38841-2022

Date of Decision: September 09, 2022

JASVIR SINGH**....Petitioner(s)****VERSUS****STATE OF PUNJAB****....Respondent(s)****CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr. Dinesh Trehan , 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 12.07.2022 (Annexure-4) passed by learned Addl. Sessions Judge, Ludhiana with regard to FIR No.149, dated 17.05.2017(Annexure P-1) under Section 22 NDPS Act, 1985 registered at Police Station City Jagraon, District Ludhiana Rural.

Learned counsel for the petitioner submits that FIR in question is dated 17.05.2017. The petitioner was granted regular bail on 21.06.2017 by the trial Court and charges had been framed on 20.11.2018 but the prosecution failed to examine even a single witness till today. He submits that till January 2020, the petitioner continued to regularly appear before the learned trial Court. Learned counsel further submits that vide order dated 05.09.2022, passed by this Court, petitioner was to place on record photocopy of zimni orders passed in this case. He while producing the same during the course of hearing, refers to the same to substantiate his aforesaid assertion. He further submits that it is only on 07.01.2020, that the

petitioner was unable to appear before the trial Court and notice was issued for 24.01.2020, on which date the notice of accused was received back unserved and bailable warrants were issued for 15.04.2020, and from that date till 18.12.2020, the case kept being adjourned due to Covid pandemic, reference in this regard has been made to the zimni orders. Thereafter, on 22.02.2021, 29.04.2021, 09.11.2021, 18.01.2022 and 09.05.2022 unable to appear as being poor truck driver he was out of town to earn his livelihood, thus, it was due to this unavoidable circumstance, he absented. On 09.05.2022, his bail bonds were cancelled and ordered to be forfeited to the State. Non-bailable warrants was issued for 12.07.2022, on which date he was not served and fresh bailable warrants were issued for 04.10.2022. Learned counsel, submits that the non-appearance before the learned trial Court was on account of the reason stated above and not intentional or deliberate. He submits that the petitioner is ready and willing to surrender and join and prays that 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 of ASI Harjinder Singh, learned State counsel submits that the petitioner has been absenting time and again and the impugned order may not be set aside.

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 of non-appearance that has come forth in this case is that being a poor truck driver he was out of town to earn his livelihood. He was unaware of the passing of non-bailable warrants issued against him.

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 had 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 worth noticing yet another fact that vide order dated 12.07.2022, the non-bailable warrants of the petitioner have been issued for 04.10.2022 and the present petition has been filed by him on 22.08.2022, which is prior to 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, he being a poor truck driver, having absented as he was out of town to earn his livelihood. 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 Coordinate Bench of this Court, as referred to above, the present petition is allowed and the impugned order dated 12.07.2022 (Annexure P-4) 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 on or before 04.10.2020, 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

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**(AMAN CHAUDHARY)
JUDGE**

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