

235

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-39000-2022

Date of Decision: September 09, 2022

RAGHAV

....Petitioner(s)

VERSUS

STATE OF PUNJAB

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Umesh Kumar Kanwar, 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 17.08.2022 (Annexure-9) passed in CIS NO.SC/635/235/2021 with regard to FIR No.30, dated 13.03.2019 under Sections 379-B/411/34 IPC registered at Police Station Division NO.5, Jalandhar District Jalandhar.

Learned counsel for the petitioner submits that the FIR against the petitioner was lodged on 13.03.2019 under Sections 379-B/411/34 IPC at Police Station Division Jalandhar, District Jalandhar. He further submits that the petitioner had been granted regular bail vide order dated 11.04.2019 by the learned Sessions Judge. The challan was filed and the case was forwarded to the Court of Addl. Sessions Judge, Jalandhar on 30.11.2021

and was thereafter fixed on 20.12.2021 for framing of charges, which due to Covid-19 pandemic, were framed against the petitioner vide order dated 06.05.2022, whereafter, the petitioner appeared on 04.07.2022 and 01.08.2022, reference in this regard has been made to the zimni orders Annexures P-1 & P-7.

Learned counsel for the petitioner further submits that the petitioner and his counsel, inadvertently, noted down the date of hearing as 15.03.2022 instead of 15.02.2022, on account of which the petitioner was unable to appear on the said date; bail was cancelled vide order dated 15.02.2022 and non-bailable warrants were issued against him. The petitioner was thereafter summoned through proclamation for 06.05.2022. In the meantime, the order dated 15.02.2022 was challenged by the petitioner before this Court by filing CRM-M No.14145 of 2022, wherein this Court vide order dated 04.04.2022, Annexure P-5, set aside the said order subject to appearance of the petitioner before learned trial Court within 10 days and he was allowed to remain on the same bail bonds and surety bonds. In the event of non-compliance thereof, the order dated 15.08.2022 was to remain intact.

In the present petition, the challenge is to an order dated 17.08.2022, Annexure P-9, passed by learned trial Court, whereby the bail of the petitioner was cancelled, bail bonds and surety bonds were forfeited to the State and he was summoned through non-bailable warrants for 14.09.2022.

It is the contention of the learned counsel for the petitioner that the non-appearance of the petitioner on 17.08.2022 was on account of the fact that he was admitted in the drug addiction centre i.e. Jiwan Jot

Foundation Regd. Village Nhanjal, Tehsil Ghanari, District Una (HP). Thus, it was due to ill health of the petitioner that he could not appear before the learned trial Court, as the members of the society had taken him to provide him with treatment. Reference to the certificate issued by the society dated 17.08.2022, Annexure P-8, has been made in this regard. Learned counsel, therefore, submits that his non-appearance was neither intentional nor deliberate but had occurred due to the above said reason, which was beyond his control.

He, however, submits that the petitioner is ready and willing to join the proceedings and has instructions from the petitioner that he will continue to appear before the trial Court, unless exempted by a specific order. He further prays that the said impugned order may be set aside, subject to payment of costs, which he has instructions from the petitioner, who is willing to deposit the same, in the event one opportunity is granted to him to appear and join the proceedings before the learned trial Court. 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”**.

The learned counsel further prays that he be allowed to remain on the same bail bonds and surety bonds, which had already been submitted by him before the learned trial Court. In this regard, he places reliance on the previous order, Annexure P-5, passed in his case by the Coordinate

bench of this court, wherein he was allowed to remain on the same surety bonds. The relevant para from the said order reads as thus:-

“Warrants of arrest of accused Raghav received back unserved with the report that he is evading service. I am of the considered opinion that accused cannot be served through ordinary process. As such, accused is ordered to be summoned through proclamation under Section 82 Cr.P.C. for 06.05.2022.”

He also relies on the judgment passed by a Coordinate Bench of this Court in **“Nitin Monga vs. State of Punjab and another”**, reported in 2017 (2) L.A.R. 342, wherein also the petitioner therein had been granted bail on the earlier bail bonds furnished by him before the trial court.

On instructions of ASI Sanjeev Kumar, learned State counsel states that the certificate, Annexure P-8, issued by Jiwan Jot Foundation Reg. Drug Addiction and Rehabilitation Centre, reliance upon which was placed by the petitioner has been verified to be correct and further submits that the petitioner is still admitted in the said centre for rehabilitation programme.

In this case, notice has not been issued to the complainant as he has not been impleaded as respondent party and as no order prejudicial to the rights of the complainant, is being proposed to be passed by this Court and issuance of notice would only further delay the matter, which would cause prejudice to the complainant and therefore, the present petition stands disposed of without issuance of notice to the complainant.

Heard the learned counsel for the parties.

It is apparent from perusal of the zimni orders Annexure P-7 that the petitioner had been appearing before the learned trial Court except

on 17.8.2022. It is evident from the documents placed on record, as also verified by the learned State counsel, that the reason for non-appearance of the petitioner on 17.08.2022, was on account of his being admitted for rehabilitation under the rehabilitation programme in the drug addiction and rehabilitation centre.

It is apposite to notice yet another fact that the impugned order cancelling his bail bonds was passed on 17.08.2022 and non-bailable warrants were issued for his appearance on 14.09.2022 and the petitioner filed the present petition on 23.08.2022, which is prior to the date of appearance before the trial Court, which reflects his *bonafide*. At times, the accused can be prevented by sufficient reasons, which in the present case being his having been admitted in a drug rehabilitation centre, justifies his non-appearance before the Court on the given date and as such cannot 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 is justified and therefore, the same is acceptable. Moreover, the very purpose of issuance of non-bailable warrants, is to secure the presence of the petitioner before the trial Court.

This Court in case of Manpreet Singh (*supra*) and Surjit Singh (*supra*) in somewhat similar circumstances set aside the order of issuance of non-bailable warrants in a case where the petitioner gave sufficient reasons for his non-appearance before the trial Court.

Keeping in view the aforesaid peculiar facts and circumstances of the case and the judgments passed by this Court, referred to above, the impugned order dated 17.08.2022 is set aside, subject to deposit of Rs.5000/-

with the District Legal Services Authority, Jalandhar. The petitioner shall appear before the trial Court on the date fixed i.e. 14.09.2022. The petitioner be allowed to remain on the same bail/ surety bonds as has been furnished by him at the time for granting regular bail, in view of the orders dated 04.04.2022, Annexure P5 passed in the case of the petitioner by a Coordinate bench of this Court and the case of Nitin Monga (supra).

However, it is clarified that in the eventuality of the petitioner not complying with the aforesaid order, 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*