

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-34451-2022 in/and
CRM-M-39806-2022
Date of Decision: 22.09.2022****Sahib Singh****.....Petitioner****Vs.****State of Punjab and another****.....Respondents****CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY****Present: Mr. R.B. Gupta, Advocate,
for the applicant-petitioner.****Mr. Manipal Atwal, D.A.G., Punjab.*************AMAN CHAUDHARY, J. (Oral
CRM-34451-2022**

By this application, the applicant-petitioner seeks advancement of the date of hearing in the accompanying petition which is fixed for 12.10.2022.

Notice of motion was issued in the application on 15.09.2022 by dasti process.

Learned counsel for the petitioner has produced the dasti summons, as per which respondent no. 2 is stated to have been served, as per report dated 20.09.2022 but no one has put in appearance on behalf of respondent no. 2 today in Court.

With the consent of both learned counsel for the petitioner, as well as learned State counsel, the application is allowed and the accompanying petition is taken on board today itself.

CRM-M-39806-2022

Present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside the order dated 26.05.2022, Annexure P-2, passed by learned JMIC, Ferozepur, in Complaint No. NACT 1095 of 09.10.2018, under Section 138 of the Negotiable Instruments Act, 1881, filed by respondent no. 2 whereby the petitioner was declared as a proclaimed person.

Learned counsel contends that the petitioner has been residing at Moga for the last 4-5 years. In that regard, he has placed on record and makes a reference to Annexures P-3 to P-8, being From J of Market Committee, Dharamkot, dated, 15.04.2021, a copy of passport with the date of issuance showing as 20.12.2018, a copy of Indian Union Driving Licence showing the date of issuance dated 26.12.2017, a copy of the PAN card, dated 01.08.2019, a copy of Aadhar card issued on 19.07.2017, and a copy of residence proof dated 10.09.2022, (all of the petitioner), issued by Gurbinder Singh, Municipal Councilor Dharamkot (Moga), respectively, all of which reflects his address Ward No. 01, Agwar Gillan Da, Pandori Gate, Tehsil Dharamkot, District Moga.

The reliance by the learned counsel on these documents is primarily to show that he was a resident of Moga whereas the summons and warrants issued by the learned trial court whereby he was declared a proclaimed person vide order dated 26.05.2022 (Annexure P-2) were issued at his address given by the complainant in the complaint which is detailed in the complaint Annexure P-1 is of the Village Dula Singh Wala,

Tehsil and District Ferozepur, as well as Near Diary Farm, Shadiwala, Tehsil Dharamkot, District Moga.

Learned counsel further submits that his absence in the proceedings was therefore neither willful nor deliberate but on account of not having received the summons and warrants.

Learned counsel submits that he seeks just one opportunity to surrender and appear before the trial court, so as to join the trial.

Heard the arguments advanced by learned counsel for the parties.

In the present case, the explanation given by the petitioner for his non-appearance in this case before the trial Court seems to be justified as it was on account of the summons having remained unexecuted and affixation done at a different location at address mentioned in the complaint than where the petitioner was actually living as substantiated with the documents produced as Annexures P-3 to P-8.

This Court in **Major Singh vs. State of Punjab**, CRM-M-3649-2022, decided on 15.9.2022, in somewhat similar circumstances, while setting aside the order, observed thus:

“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.”

In view of the facts and circumstances of this case and the judgments referred to above, the impugned order dated 26.05.2022 Annexure P-2, is set aside, subject to deposit of Rs. 5,000/- with the Punjab and Haryana High Court Bar Association Advocates' Welfare Fund. The petitioner is directed to surrender before the trial Court on or before 12.10.2022, 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.

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.

September 22, 2022
nitin

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No