

CRM-M-41457-2022

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

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CRM-M-41457-2022

Date of Decision: September 16, 2022

JASWINDER SINGH @ BILLA

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Sandeep Kumar, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

The present petition under Section 482 of the Cr. P. C. has been for setting aside order dated 16.08.2022, Annexure P-3, passed by learned Judge, Special Court, Kapurthala whereby the bail order of the petitioner was cancelled and bail bonds and surety bonds were forfeited to the State.

Learned counsel for the petitioner submits that the petitioner was granted regular bail vide order dated 28.07.2016 by the trial Court in the FIR in question. It is his contention that the petitioner was facing trial and appearing before the Court regularly. It is only on one date i.e. 16.08.2022, the petitioner did not appear before the trial Court due to having noted a wrong date, non-bailable warrants were issued against the petitioner for 22.09.2022 by the learned trial Court after cancelling his bail and forfeiting bail and surety bonds to the State.

Learned counsel further submits that immediately on 5.9.2022, the present petition was filed challenging the order 16.8.2022, Annexure P-3. Learned counsel submits that it is only on account of noting down the

wrong date of hearing that the petitioner was unable to appear before the learned trial Court that led to passing of the impugned order dated 16.8.2022, Annexure P3.

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 of this Court in CRM-M-38277-2022 dated 26.08.2022, in the case of “Surjit Singh Vs. State of Punjab” and CRM-M-39000-2022, titled as Raghav vs. State of Punjab, decided on 9.9.2022

Per contra, learned State counsel on instructions from ASI Parwinder Singh submits that there are five more cases registered against the petitioner and the impugned order has been rightly passed by the learned trial Court.

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 arguments advanced by learned counsel for the parties.

As is apparent from the impugned order, the non-bailable warrants had been issued against the petitioner on 16.08.2022 for 22.09.2022 and the present petition was filed on 05.09.2022, reflects the *bonafide* of the petitioner to join the proceedings at the earliest. At times, the accused can be prevented by some reason, which in the present case was due to noting down the wrong date, which 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 seems to be justified. Moreover, the very purpose of issuance of non-bailable warrants, 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.

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:

“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.”

In view of the facts and circumstances of this case and the

judgments referred to above, the impugned order dated 16.8.2022, Annexure

P-3, set aside, subject to deposit of Rs.10,000/- with the Poor Patients' Welfare Fund of the Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh. 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.

September 16, 2022
Rimpal/gsv

(AMAN CHAUDHARY)
JUDGE

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