

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

Sr. No.118

CRM-M-45881-2022

Date of decision : 11.10.2022

Geeta

.....Petitioner(s)

VERSUS

Jeewan Lal Sophat

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Rakesh Gupta, Advocate for the petitioner

AMAN CHAUDHARY, J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside the order dated 15.11.2021, Annexure P-7, passed by learned Additional Sessions Judge, Patiala whereby the bail granted to the petitioner was cancelled and he has been summoned through non-bailable warrants.

Learned counsel for petitioner contends that a complaint under Section 138 of the Negotiable Instruments Act, 1991 was filed against the petitioner, he was summoned to face the trial vide order dated 21.9.201, Annexure P-1. In the said proceedings, the petitioner was convicted and sentenced vide judgment/order dated 16.2.2018 by the learned trial Court for a period of one year with fine of Rs.2000/-. Aggrieved against the same, the petitioner had filed an appeal before the learned Additional Sessions Judge, Patiala. Her sentence was suspended by the learned Additional Sessions Judge, Patiala vide order dated 17.3.2018, Annexure P-5, during the pendency of the appeal. He further contends that

till 5.10.2021 except on date i.e. 23.3.2021, which also includes the adjournments on account of Covid-19 pandemic, the petitioner had been regularly appearing in the appeal through her counsel or many a times in person without any default, in this regard a reference is made to the zimni orders, Annexure P-6. It is further submitted that on 15.11.2021, the petitioner as well as her counsel failed to appear before the Court as a result of which, her bail was cancelled and bail/surety bonds were forfeited to the State and non-bailable warrants were issued against her vide Annexure P-7. He further submits that the petitioner is an illiterate lady and gypsy woman/waste collector. It was on account of that she was not able to pay the engagement fee to her counsel before the trial Court as promised by her, therefore, her counsel did not appear and neither did he inform the status of the case to her, which led to her non-appearance before the Court on 15.11.2021. He, however, submits that the petitioner is ready and willing to join the proceedings, even if it is subject to costs. 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.

The learned counsel further prays that she be allowed to remain on the same bail bonds and surety bonds, which had already been submitted by her before the learned appellate Court. 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 and **Paramjit Singh @ Pammi vs. State of Haryana** 2021(4) PLR 470, wherein also the

petitioner therein had been granted bail on the earlier bail bonds furnished by him before the trial court.

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-respondent.

Heard the arguments advanced by learned counsel for the petitioner.

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.

In the case in hand, as stated by learned counsel for the petitioner, the petitioner is an illiterate lady, the zimni order also shows that except one date i.e. 15.11.2021, she remained present before the court on each and every date. The explanation offered by the petitioner for her non-appearance in this case before the appellate Court seems to be justified. It cannot be construed as a deliberate and willful absence.

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.”

A reference can also be made to the judgment of the Hon'ble Supreme Court of India in case of '**Rafiq and another vs. Munshilal and another**' reported as AIR 1981 SC 140, the relevant reads thus:-

“What is the fault of the party who having done everything in his power expected of him, would 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.”

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 15.11.2021 is set aside, subject to deposit of Rs.5000/- with the trial Court to be disbursed to the complainant forthwith. The petitioner shall appear before the trial Court on the date fixed i.e. 18.10.2022. The petitioner be allowed to remain on the same bail/ surety bonds as has been furnished by her at the time for granting regular bail, in view of the orders in the cases of Nitin Monga, Paramjit Singh @ Pammi as

well as Raghav (supra). She is also directed to furnish an undertaking by way of her affidavit that she 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.

11.10.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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