

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

CRM-M-45783-2022

Date of Decision: September 30, 2022

Jagdish Singh

...Petitioner

Versus

Karamjit Singh Gill

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Mayur Karkra, Advocate for the petitioner.

AMAN CHAUDHARY, J.(Oral)

Present petition has been filed for quashing of orders dated 29.04.2022 (Annexure P-6), 27.07.2022 & 01.08.2022 (Annexure P-7) and 19.09.2022 (Annexure P-8) passed by the learned Addl. Sessions Judge, Ludhiana, whereby on non-appearance of the petitioner due to wrong date being conveyed to the petitioner by the counsel, the bail bonds of the petitioner have been cancelled and non-bailable warrants of arrest have been issued against him by the appellate Court.

Learned counsel submits that in the complaint filed under Section 138 of the Negotiable Instruments Act, 1881, the petitioner was convicted vide order dated 04.05.2019, aggrieved against which he filed an appeal on 10.12.2019, wherein his sentence was suspended vide order dated 10.12.2019, learned counsel submits that though he is not in possession of the order granting bail, however he refers to the order dated 05.10.2021 (Annexure P-4), wherein his presence has been marked and the factum that he was on bail was recorded. He further submits that thereafter the matter kept adjourning due to COVID pandemic. It is

29.04.2022 that the petitioner could not appear on account of the petitioner not being well, a reference is made to Annexure P-6, which is a prescription by a doctor 26.04.2022 whereby he was advised bed rest for ten days. He draws attention to para 9 of the petition wherein it has been stated that the medical certificate had been given to his counsel to present the same before the Court, however his counsel neither put in appearance nor filed any application seeking exemption, leading to issuance of warrants of arrest for 14.07.2022 on having enquired from the counsel he was informed that next date was 25.09.2022. However, the matter was listed for 15.07.2022, thereafter adjourned to 27.07.2022 and 01.08.2022 and 19.09.2022, on all these dates the petitioner was unable to appear on account of the fact that the date informed by his counsel was 25.09.2022. He further submits that his non-appearance was not willful nor intentional. It was on account of the fault of the counsel firstly in not presenting the medical certificate given by him to his counsel on 29.04.2022 nor appearing himself and thereafter informed the wrong date, which leading to warrants having been issued on 19.09.2022 for 01.12.2022. He further submits that it was on 22.09.2022 that the petitioner went to Court to clear instructions, he came to know about the passing of the orders Annexure P-6 to P-8. Reference is made in this regard to the averments made in para 12 of the petition. He prays for one opportunity to join the proceedings for which he is ready to surrender and furnish fresh bail/surety bonds which may be subject to the 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.

Notice of motion.

At the asking of the Court, Mr. Manipal Singh Atwal, DAG, Punjab, appears and accepts notice on behalf of the State. He opposes the present petition and states that the impugned order had rightly been passed by learned trial Court on account of non-appearance of the petitioner.

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.

Heard the learned counsel for the parties.

Present petition has been filed on 28.09.2022 on coming to know the that fact of issuance of non-bailable warrants on 22.09.2022, that is prior to the date for which the warrants have been issued it being 01.12.2022, shows the bonafide of the petitioner inasmuch as that he is keen to join the proceedings.

The reason that has come forth in this case is that petitioner was not informed of the exact date by his counsel, which led to his non-appearance. It is the positive case of the petitioner that he had otherwise surrendered and was regularly appearing, which fact has not been so disputed by the learned State counsel. However, on account of default of learned counsel, a reliance can be placed on a case of ***Rafiq and another vs Munshilal and another***” by the Hon'ble Supreme Court of India, reported as AIR 1981 SC 140, which reads thus:-

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

It may be noticed that, as is, the submission of the learned counsel for the petitioner that the non-appearance of the petitioner was on account of the fact that his counsel informed him the wrong date prior to which he could not appear, being unwell, for which medical record has been referred to in para 9 of the petition, but his counsel neither put in appearance nor filed application for exemption from personal appearance. This Court finds the explanation of the petitioner to be apparently genuine, though it was the duty of the petitioner also to keep track of his case and could have enquired the next date from his counsel. However, keeping in view the very purpose of issuance of non-bailable warrants, being, to secure the presence of the petitioner so that he appears in trial, this Court is of the view that the ends of justice would be met, in case, the petitioner is directed to appear before the trial Court in a stipulated time and furnish fresh bail/surety bonds.

In view the peculiarity of the facts and circumstances of the case and the judgment passed by the Hon'ble Supreme Court of India and a Coordinate Bench of this Court, as referred to above, the present petition is allowed and the dated 29.04.2022 (Annexure P-6), 27.07.2022 & 01.08.2022 (Annexure P-7) and 19.09.2022 (Annexure P-8) passed by the learned Addl. Sessions Judge, Luhdiana, are set aside, subject to costs

of Rs.5000/- to be deposited with the Bar Association Welfare Funds of this Court. In case the petitioner appears on or before 28.10.2022 before the trial Court, 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.

Disposed of.

September 30, 2022

sarita

(AMAN CHAUDHARY)
JUDGE

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