

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(129)

CRM-M-46929-2022

Date of decision: - 12.10.2022

Surender

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

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

Mr. Dhruv Sihag, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. for quashing of the order dated 09.06.2022 (Annexure P-4), passed by the Chief Judicial Magistrate, Palwal, vide which the bail of the petitioner has been cancelled and bonds were forfeited to the State with respect to FIR No.218 dated 03.04.2018 under Section 336 & 420 IPC and Sections 15(2) of the Indian Medical Council Act, at Police Station Camp Palwal, District Palwal. The challenge is also to the order dated 27.09.2022 (Annexure P-5) passed by the Additional Sessions Judge, Palwal, whereby, appeal filed against the order dated 09.06.2022 (P-4) has been dismissed, as being not maintainable.

Learned counsel for the petitioner has submitted that the petitioner was granted anticipatory bail by the Additional Sessions Judge

(1), Palwal, vide order dated 23.04.2018 and thereafter, when the challan was presented, the petitioner was also released on regular bail on furnishing of bail bonds, vide order dated 02.06.2018 and thereafter, he had been regularly appearing before the trial Court, but he could not appear on 09.06.2022 as real brother of the petitioner had expired on 26.05.2022 and the petitioner had gone to the village to attend the 'kriya ceremonies' of his brother. In this regard, a reliance has been placed upon the death certificate of the brother of the petitioner, which has been annexed as Annexure P-6. It is further submitted that on 09.06.2022, no prosecution witness was present and the case before the trial Court is now fixed for 03.01.2023 and the petitioner undertakes to appear before the trial Court within a period of one month from today and also on each and every date thereafter before the trial Court, unless his personal appearance is specifically exempted by the trial Court. Since, the purpose of issuance of warrants of arrest is to secure the presence of the accused, thus, the interest of justice would be met, in case, the impugned order is set aside and the petitioner is directed to appear before the trial Court. It is also submitted that the petitioner had challenged the order dated 09.06.2022 by filing an appeal, which was dismissed on 27.09.2022 on the ground that the appeal was not maintainable. It is also submitted that the said appeal has been rightly dismissed and therefore, the petitioner has also challenged the original order dated 09.06.2022 before this Court.

Notice of motion.

On advance notice, Mr. Dhruv Sihag, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that

he is fully prepared to argue the matter and assist this Court. He has opposed the present petition and has submitted that the petitioner was aware about the above-said date of hearing and that he was required to appear before the trial Court. It is further submitted that non-appearance of the petitioner on 09.06.2022 was intentional and thus, the impugned order has been rightly passed.

This Court has heard the learned counsel for the parties and has perused the paper-book.

The petitioner was granted anticipatory bail by the Additional Sessions Judge, (1) Palwal, vide order dated 23.04.2018 (Annexure P-2) and thereafter, he had been admitted on regular bail on furnishing of bail bonds, after the challan was presented, on 02.06.2018. It is the case of the petitioner that he had been regularly appearing before the trial Court and on 09.06.2022, he could not appear on account of the fact that his brother had expired on 26.05.2022 and the petitioner had gone to village to attend the 'kriya ceremonies' of his real brother. A perusal of the order dated 09.06.2022 would show that no witness of the prosecution was examined on the said date. The case before the trial Court is now fixed for 03.01.2023. The petitioner has undertaken to appear before the trial Court within a period of one month from today and also on each and every date thereafter, before the trial Court unless his personal appearance is specifically exempted by the trial Court.

Keeping in view the above-said facts and circumstances, the present petition is allowed and the impugned order dated 09.06.2022 (P-4), to the extent that the bail order of the petitioner has been cancelled

and bonds have been forfeited to the State, is set aside, subject to the petitioner appearing before the trial Court within a period of one month from today and on his appearance, the trial Court is directed to release the petitioner on bail on his furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court. The same would also be subject to the petitioner depositing an amount of Rs.5,000/- with the 'High Court Lawyers' Welfare Fund' and would also be subject to the petitioner giving an undertaking to the trial Court that he would appear before the trial Court on each and every date unless his personal appearance is specifically exempted by the Court.

It is, however, clarified that in case, the abovesaid conditions are not complied with, within the stipulated time period, then the present petition would be deemed to have been dismissed.

October 12, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No