

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

CRM-M-46413-2022

Date of Decision: 04.10.2022

HARWINDER ARORA

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Gautam Thapar, Advocate
for the petitioner.

Mr. Sandeep Chopra, DAG Punjab.

DEEPAK MANCHANDA J. (ORAL)

The petitioner has preferred this petition under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in FIR No. FIR No. 128 under Section 18 of the NDPS Act dated 24.09.2017 registered at Police Station Division No. 4, District, Jalandhar.

Learned counsel for the petitioner contends that vide order dated 14.05.2019, the petitioner was granted the concession of regular bail who continued to attend the trial proceedings regularly. However, on 08.12.2020, he failed to appear before the trial Court and remained absent as he was suffering from the problem of survival and thereafter due to Pandemic, Courts remained closed and could not contact his counsel. He further submits that even after the opening of the Court, petitioner never received any notice from the Court for appearance in the Court. Hence, his absence is unintentional and bona fide. Reasons for the same have been mentioned in para Nos. 4, 5 and 6 of the present petition. The absence of the petitioner resulted into passing of the order dated 07.07.2022, whereby the learned trial Court proceeded to cancel the bail and issued the non-bailable warrants.

He further submits that the case now is fixed before the trial Court on 06.10.2022 and the petitioner is ready and willing to join the trial proceedings.

When learned counsel for the petitioner was confronted with the maintainability of the petition, he makes the prayer to treat the petition under Section 482 Cr.P.C.

Prayer is accepted.

Notice of motion.

At this stage, Mr. Sandeep Chopra, DAG Punjab, who is present in the Court accepts notice on the asking of the Court and submits that the impugned order has been passed on the sole ground of absence of the petitioner, however, it is not disputed by him that the petitioner was already on bail since 14.05.2019 and had been appearing before the trial Court.

A perusal of the order dated 07.07.2022 (Annexure P-1) reflects that the trial Court proceeded to pass the extreme order of cancellation of bail for the solitary reason of absence of the petitioner.

Learned counsel for the petitioner submits that the said absence was unintentional and due to the reasons mentioned paras 4, 5 and 6 of the petition.

Many a times, the accused can be prevented by sufficient reasons to put in appearance before the Court on a given date, which necessarily cannot be construed as a deliberate and willful absence. The explanation offered for non-appearance and unintentional absence before the trial Court is accepted.

In view of the same, the order dated 07.07.2022 (Annexure P-1) is hereby set aside. The petitioner is directed to appear before the trial Court on 06.10.2022 and is allowed to remain on the same bail bonds and surety bonds.

In case, the petitioner does not appear before the trial Court on the given date, the order dated 07.07.2022 (Annexure P-1) shall remain intact.

Petition disposed of.

04.10.2022
Ajay Goswami

(DEEPAK MANCHANDA)
JUDGE

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