

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

Sr. No.124

CRM-M-47300-2022

Date of decision : 14.10.2022

Manjeet Kaur

.....Petitioner(s)

VERSUS

Mulakh Raj and another

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Bhupender Singh, 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 26.9.2022, Annexure P-6, passed by learned Additional Sessions Judge, Karnal in CRA No.86 of 2019 titled as Manjeet Kaur vs. State of Haryana, whereby non-bailable warrants have been issued against the petitioner, as she has failed to deposit 20% of the compensation amount as imposed by the Court while suspending the sentence of the petitioner.

A complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') in this case was initiated in the year 2017. The petitioner was convicted vide judgment dated 9.1.2019 and by order of even date, sentenced to undergo rigorous imprisonment for a period of one year and to pay compensation equivalent to cheque amount. Aggrieved against the said order of the judgment of conviction, an appeal was preferred by the petitioner, wherein vide order dated 31.1.2019, Annexure P-3, suspended the sentence of the petitioner subject to deposit 20% of the compensation amount within a period of 60 days. The petitioner filed an application for

seeking exemption from personal appearance alongwith the medical certificates, Annexures P-4 and P-5, which came to be declined by the learned Additional Sessions Judge vide order dated 26.9.2022, Annexure P-6 and order of suspension of sentence was revoked and non-bailable warrants were issued against the petitioner for 22.11.2022.

Learned counsel for the petitioner submits that non-appearance of the petitioner before the Appellate court was neither intentional, nor deliberate and it was for the reason of being unwell, which was so averred in the application filed by her for seeking exemption from personal appearance, which was also supported by the medical evidence. He submits that the petitioner is ready and willing to join the proceedings, Thus, he prays for grant of only one opportunity to surrender and join the proceedings and also to deposit the said amount, which may even be 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.

Notice of motion.

At the asking of the Court, Ms.Aditi Girdhar, AAG, Haryana accepts notice on behalf of respondent No.2- State and submits that the impugned order has been rightly passed by the learned trial Court.

In this case, notice has not been issued to the complainant as no order prejudicial to the rights of the complainant, is being proposed to be passed by this Court.

The arguments advanced by learned counsel for the parties have been heard.

The present petition was filed before this Court on 10.10.2022, which is prior to the date for which the non-bailable warrants have been issued against the petitioner, which shows his *bona fide*. Moreover, the petitioner had also appended the medical record with regard to her illness alongwith the application seeking exemption from appearance and that she is also ready to deposit the compensation amount, as per the order whereby her sentence had been suspended.

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.

The explanation offered by the petitioner for her non-appearance in this case before the trial 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.”

This Court in case of **Harwinder Singh vs. Mohan Lal**, 2022

(1) RCR (Crl.) 136 after considering the judgments of Hon'ble the Supreme Court of India in the cases of **Surender Singh Deswal @ Col. S.S. Deswal vs. Virender Gandhi** reported as 2019(3) RCR (Crl.) 186 and **Ram Singh vs. Tek Chand** 2020(2) RCR (Crl.) 448 had held as under:-

“19. That the Appellate Court in an appeal against conviction under Section 138 of the N.I Act, while suspending the sentence of the Appellant/Convict, has the power to impose a condition that on nondeposit of the fine/compensation, the benefit of suspension of sentence would be liable to be automatically/ consequently vacated.

20. Before parting with this order, it would be relevant to mention that on 05.10.2021, this Court was pleased to issue notice of motion and notice regarding stay and the petitioner was directed to deposit Rs.1,50,000/- as undertaken by the petitioner and in the order dated 13.10.2021, it was submitted that the petitioner had deposited Rs.1,50,000/- in pursuance to the order dated 05.10.2021 and since the respondent was not served on the said date, the Appellate Court was directed to give a date beyond the date fixed by this Court. The period of 60 days in the present case has already elapsed on 18.10.2021 and 90 days would elapse on 18.11.2021. Since the present petitioner has been pursuing the present litigation and has not delayed the matter in any

manner, thus, the petitioner is permitted to deposit the balance amount of Rs.3.5 lacs by 18.11.2021. For the said purpose, reference can also be made to the judgment of Hon'ble Supreme Court of India in ***Surinder Singh Deswal's*** case (1st case) (supra) and co-ordinate Bench in ***Ram Singh's*** case (supra).”

In view of the facts and circumstances of this case and the judgments referred to above, the impugned 26.9.2022, Annexure P-6, passed by learned Additional Sessions Judge, Karnal is set aside, subject to deposit of Rs.5,000/- with the Punjab and Haryana High Court Bar Association Advocates' Welfare Fund. The petitioner is directed to surrender before the trial Court on or before 22.11.2022 and also deposit 20% of the compensation amount as imposed by the Appellate Court and furnish her fresh bail/ surety bonds. On so doing, the trial Court shall release her on bail to its satisfaction. He 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.

14.10.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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