

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

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CRM-M-49425-2022 (O&M)

Date of decision: 21.10.2022

ANKIT AGGARWAL

....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Abhimanyu Singh, Advocate
for the petitioner.

AMAN CHAUDHARY. J. (ORAL)

The present petition has been filed under Section 482 CrPC for quashing/setting aside of the impugned order dated 22.09.2022 passed by learned Judicial Magistrate First Class, Faridabad (Annexure P-3) qua the petitioner arising out of criminal complaint bearing NACT/5862 of 2019 (date of institution 17.09.2019) titled as Crystic Resins India Pvt. Ltd. Vs. RMC Switchgears Ltd. Etc., whereby the bail of the petitioner has been cancelled, bonds have been forfeited to the State and further warrants of arrest against the petitioner have been issued.

Learned counsel for the petitioner submits that a complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed against the petitioner and other Directors of the Company. He submits that there were business dealing between the Company of the petitioner as well as complainant-respondent No.2, during which different materials were purchased from complainant-respondent No.2 by the petitioner. He submits that cheque dated 11.05.2019, which had been given by the Company of the petitioner was dishonoured. Before filing a complaint, a demand notice had been issued on 27.08.2019. He submits that the entire payment was made by the Company of the

petitioner. Reference in this regard is made to Para 2 of the present petition. It is his further submission that still complaint had been filed. The revision was filed against the summoning order by the petitioner before the learned District & Sessions Judge, Faridabad, which was withdrawn with liberty to file an application under Section 245 CrPC, which also was dismissed vide order dated 22.09.2022 (Annexure P-2). He submits that on the same very day on the absence of the petitioner, his bail was cancelled and bail bonds were forfeited to the State and warrants of arrest had been issued for 24.11.2022. Learned counsel for the petitioner submits that his absence was not wilful or deliberate as the same was on the ground that his application under Section 245 CrPC was under consideration and he seeks only one opportunity to surrender and appear before the Court to join the proceedings, which may even subject to costs. In support of his submissions, he relies on Surjit Singh vs. State of Punjab, CRM-M38277-2022, decided on 26.8.2022, Naveen Rao vs. Central Bureau of Investigation (CBI) ACB, Chandigarh, CRM-M-29461-2018, decided on 18.7.2018, Dimple Kumar vs. State of Punjab 2017(1) RCR (CrI.), 602 and 'Sonu Sharda vs. State of Punjab' CRM-M-16648-2020 decided on 1.6.2020.

Notice of motion to only respondent No.1 at this stage.

Mr. Gaurav Bansal, AAG Haryana accepts notice and submits that the impugned order has been rightly passed by the learned trial Court on account of non-appearance of the petitioner.

Notice has not been issued to the respondent No.2/complainant as no order prejudicial to the rights of the complainant, is being proposed to be passed by this Court.

Heard learned counsel for the parties.

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 present petition has been filed on 19.10.2022, prior to the date for which the non-bailable warrants have been issued i.e. 24.11.2022, which reflects the bona fide of the petitioner inasmuch as that he is keen to join the proceedings.

The explanation offered by the petitioner for his 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-36490-2022, 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 Coordinate Bench of this Court **Naveen Rao's** case (supra) has held

thus:-

“In the present case also, the bail/surety bonds have been cancelled as the petitioner left India without prior permission of the Court. An application for exemption from personal appearance was also moved, which was dismissed. The petitioner is NRI and he went abroad without seeking any permission from the Court, which has been stated to be inadvertent as he did not go through the terms and conditions of bail but the circumstances were beyond his control. The petitioner immediately came back to India and came to know that his bail bonds have been cancelled. There was no intention on his part to remain absent or to avoid the Court proceedings. The petitioner remained ill when he was abroad, remained there for a period of 20 days and could not come back immediately.”

Further in case of **Dimple Kumar** (supra), a Coordinate Bench has held thus:-

“2. The petitioner herein was arrested under the said FIR on 11.04.2015. Thereafter, a petition bearing CRM-M No. 15196 of 2015 was filed in this Court in which the petitioner was released on regular bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Ludhiana by an order dated 14.05.2015. Thereafter, the petitioner herein did not put in appearance before the trial Court on the date so fixed i.e. 25.10.2016 and sought exemption on the ground that he is suffering from viral fever. The Court took notice of the fact that the petitioner herein had sought similar exemptions on several occasions and came to the conclusion that the accused is habitual in seeking exemptions and direction was issued to ensure his presence failing which serious view would be taken against him. Since the petitioner did not put in appearance as directed by an order dated 12/26.09.2016 and preferred an application seeking exemption on the ground that he is

suffering from viral fever, the Court came to conclusion that the ground of exemption did not seem to be genuine. Resultantly, the bail bonds of the petitioner herein were cancelled and it was ordered that he be summoned through non-bailable warrants for 15.11.2016.

3. x xx

4. In view of the fact that the petitioner is willing to furnish an undertaking, without expressing any opinion on the merits of the case, the impugned order dated 25.10.2016 is set aside. The petitioner herein is directed to approach the trial Court within a week and move an application to furnish the said undertaking. On doing so, the petitioner be enlarged on bail.”

Adverting to the facts of the present case the petitioner could not appear before the trial Court, leading to the passing of the impugned order, which appears to be justified explanation of absence. However, it is incumbent upon him to join the proceedings, before the trial Court, for the culmination of the same. Considering the fact that the absence of the petitioner being not willful or deliberate and his readiness and willingness to surrender and join the proceedings, in case one opportunity is granted to the petitioner, no prejudice shall be caused to any of the parties, rather his joining the proceedings would help expediting the trial. Thus, in order to make the ends of justice meet and finding judgments referred to above being applicable to the instant case, the present deserves to be allowed.

In view of the facts and circumstances of this case and the judgments referred to above, the impugned order dated 22.09.2022 passed by learned Judicial Magistrate First Class, Faridabad (Annexure P-3), is set aside, subject to deposit of Rs.10,000/- with the Social Welfare Fund Committee of Bar Clerks Association Punjab and Haryana High Court at Chandigarh. The petitioner is directed to

surrender before the trial Court on or before 24.11.2022, before the trial Court and furnish his fresh bail/surety bonds. On doing so, the trial Court shall release him on bail by imposing heavy surety to its satisfaction. He is also directed to furnish an undertaking by way of his affidavit that he 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.

(AMAN CHAUDHARY)
JUDGE

October 21, 2022

S.Sharma(syr)

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