

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

Sr. No.123

CRM-M-50297-2022

Date of decision : 31.10.2022

Balwinder Singh

.....Petitioner(s)

VERSUS

State of Punjab

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Kamal Narula, Advocate for the petitioner

AMAN CHAUDHARY, J.

The present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 1.9.2022, Annexure P-4, passed by learned trial Court vide which the bail and surety bonds' order of the petitioner was cancelled and forfeited to the State, and non-bailable warrants of arrest have been issued against him in case FIR No.06 dated 27.01.2018, registered under Sections 379-B, 411 IPC at Police Station City Fazilka, District Fazilka.

Learned counsel, *inter alia*, contends that in the FIR lodged against the petitioner, he was arrested on 27.1.2018 and thereafter, was granted the concession of regular bail by learned Additional Sessions Judge, Fazilka vide order dated 19.5.2018, Annexure P-2. He further submits that thereafter, the petitioner was regularly appearing before the trial Court on each and every date of hearing. However, on 21.4.2022, he could not appear, he being a poor labourer had to go out of city to earn his livelihood, on account of which, non-bailable warrants were issued against him vide order dated 1.9.2022, Annexure P-4. He further submits that the absence of the petitioner before the trial Court was neither intentional nor deliberate, however, was for the reasons aforesaid. He submits that the petitioner is ready and willing to join the proceedings before the trial Court, for which

he prays for grant of only one opportunity, which may even be subject to imposition of costs or any other conditions, which this Court may deem appropriate to impose. In support of his submissions, he relies on **Surjit Singh vs. State of Punjab**, CRM-M-38277-2022, 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 (Crl.), 602 and '**Sonu Sharda vs. State of Punjab**' CRM-M-16648-2020 decided on 1.6.2020.

Notice of motion.

At the asking of the Court, Mr.Manipal Singh Atwal, DAG, Punjab accepts notice on behalf of the respondent-State. He submits that the order passed by the trial Court being well reasoned, the present petition deserves to be dismissed.

Heard the learned counsel for the parties at considerable length.

In re: **Naveen Rao's case** (supra), this Court 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), this Court 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.”

The very purpose of issuance of summons, warrants etc. 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.

Adverting to the facts of the present case inasmuch as it was due to unavoidable circumstances, 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.

As a sequel to above, this petition is hereby allowed. The

impugned order dated dated 1.9.2022, Annexure P-4, is set aside, subject to payment of costs of Rs.5,000/- to be deposited with the Punjab & Haryana High Court Bar Clerk's Association. The petitioner is directed to surrender before the trial Court on or before 10.11.2022 and furnish his fresh bail/surety bonds. On so doing, 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.

31.10.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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