

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

134

CRM-M-53886-2022(O&M)

Date of decision: 21.11.2022

SHINDO @ THORI

....Petitioner

Versus

STATE OF PUNJAB

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Akhilesh Vyas, Advocate
for the petitioner.

AMAN CHAUDHARY. J.

Present petition has been filed for setting aside the order dated 30.08.2022, Annexure P-4 passed by learned Judicial Magistrate Ist Class, Amritsar in case FIR No.93 dated 17.03.2015 under Sections 379, 323, 341, 506, 427, 148 and 149 of the IPC registered at Police Station Civil Lines, District Amrtisar and further for setting aside the order dated 04.05.2022, Annexure P-3 passed by learned Judicial Magistrate Ist Class, Amritsar whereby her bail order were cancelled and bail/surety bonds were forfeited and non-bailable warrants fo arrested had been issued.

Learned counsel contends that in the FIR dated 07.03.2015, the petitioner was arrested and subsequently released on regular bail. He submits that the petitioner had been co-operating fully and appearing before the trial Court on regular basis but had absented on 04.05.2022, which was on account of the fact that she had noted down the wrong date of hearing due to inadvertence. He submits that the aforesaid has led to her bail order cancelled and her bail bonds/surety bonds stood forfeited to the State vide order dated 04.05.2022,

Annexure P-3. He further submits that an application for grant of anticipatory bail was filed before the learned Additional Sessions Judge, Amritsar, which was dismissed as being non-maintainable on 22.06.2022, Annexure P-6. Thereafter, another application was filed by the petitioner on 30.08.2022 for seeking anticipatory bail which was also declined by the learned Additional Sessions Judge, Amritsar vide order dated 30.09.2022, Annexure P-5.

Learned counsel contends that the absence of the petitioner is neither willful nor deliberate and is on account of the reason aforesaid. He seeks one opportunity to appear before the trial Court and which may even subject to costs.

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

Mr. Manipal Singh Atwal, DAG Punjab 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.

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 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-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.”*

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 her 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 her 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 her 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 petition deserves to be allowed.

In view of the facts and circumstances of this case and the judgments referred to above, the impugned order order dated 04.05.2022, Annexure P-3 passed by learned Judicial Magistrate Ist Class, Amritsar, Annexure P-3, is set aside, subject to deposit of Rs.5,000/- with the Bar Clerks Welfare Fund Punjab

and Haryana High Court at Chandigarh. The petitioner is directed to surrender before the trial Court on or before 30.11.2022, before the trial Court and furnish her fresh bail/surety bonds. On doing so, the trial Court shall release her on bail by imposing surety to its satisfaction. She 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.

(AMAN CHAUDHARY)
JUDGE

November 21, 2022

S.Sharma(syr)

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