

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

CRM-M-53242-2022
Date of Decision: 23.11.2022

JASWANT SINGH ALIAS KAKA

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Satinder Kaur, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARSH BUNGER, J. (ORAL)

Prayer in the present petition filed under Section 482 of Code of Criminal Procedure, is for setting aside of order dated 05.07.2022 (Annexure P-4), whereby, the bail order of the petitioner was cancelled and his bail/surety bonds were forfeited to the State on account of his non-appearance on one date in case FIR No.88 dated 12.06.2020 registered at Police Station Dakha under Section 61 of the Punjab Excise Act, 1914 and his presence has been ordered to be secured by issuance of non-bailable warrants.

Learned counsel for the petitioner submits that the petitioner was admitted to bail vide order dated 15.06.2020 (Annexure P-2) and he had been attending the Court proceedings regularly. The case was listed before the trial Court on 25.04.2022 when charges were framed and the case was adjourned to 05.07.2022 but on the adjourned date i.e. 05.07.2022, the petitioner could not appear as he wrongly noted the date as 07.07.2022

instead of 05.07.2022. Learned counsel further submits that on 05.07.2022, even the counsel for the petitioner did not appear, hence, the petitioner was marked absent before the trial Court and his personal bonds and surety bonds were cancelled and forfeited to State. Learned counsel also submits that there was no intention on the part of the petitioner to delay the proceedings and the absence of the petitioner before the trial court was neither intentional nor deliberate but for the aforesaid reason. It is further submitted that the petitioner is suffering from certain ailments like; joint problems and diabetes. It is also stated that the next date before the trial Court is now fixed for 14.12.2022, whereas, as per 'Marriage Invitation Card' (Annexure P-6), the marriage of son of the petitioner is fixed for 09.12.2022. He further submits that the petitioner is ready and willing to surrender before the trial Court and join the proceedings, if he is granted one opportunity to do so. Learned counsel further submits that the petitioner undertakes to appear on each and every date before the trial court and to abide by all the terms and conditions to be imposed by this Court or by the trial Court.

On advance service of copy of the petition, learned State counsel appears and submits that since the petitioner has jumped the bail and has not followed the conditions of bail, hence, the present petition is liable to be dismissed.

Heard the arguments of learned counsel for the petitioner as well as learned counsel for the respondent-State and have also perused the paper book as well as the impugned order.

A perusal of order dated 05.07.2022 (Annexure P-4), reflects that the trial Court proceeded to pass the extreme order on account of his solitary absence after grant of bail. At times, the accused or his counsel can be prevented by sufficient reasons to put an appearance before the Court on a given date and every such absence cannot be necessarily construed as a deliberate and willful absence.

Same issue was there before the Kerala High Court in ***Mahesh vs. State of Kerala, 2014 (11) RCR (Crl.) 318*** wherein the condition of bail was violated and due to absence of the accused therein, bail was cancelled. The relevant portion of said judgment is reproduced as under: -

*“21. However, a mere violation of condition in the bail order will not lead to automatic cancellation of bail bond under Section 446-A of the Code. Apart from violation of condition in the bail order, the Court must also be satisfied that the bond is forfeited then alone, bail bond would stand cancelled and the accused can be proceeded against. It is the forfeiture of the bail bond which is crucial under Section 446-A of the Code. If the breach of condition is not wilful and is due to reasons beyond his control, it cannot be said that there is forfeiture of bond. The question is dealt with in **Rajan v. State of Kerala, 2006 (4) KLT 429** and it is held thus:*

"A bond for appearance can be said to be forfeited, only if there is a wilful default on the part of the accused in not appearing before the Court. It is needless to say that an accused can be absent in Court due to various reasons on a particular occasion. When the counsel files an application, it follows that the accused was vigilant and he had taken steps to instruct his counsel to file an application. Such an accused

cannot he said to have forfeited the bond by reason of any wilful default. It is only in cases where there is wilful default on the part of the accused to appear in Court, forfeiture of bond will follow and penalty will incur."

22. In State of Kerala v. Anil Kumar, 2005 (4) KLT SN 59, referring to cancellation of bail, this Court held thus: "an innocent violation of any condition imposed by the Court will not ipso facto lead to cancellation of bail under section 439(2) Criminal Procedure Code. The crucial and vital question is whether there has been deliberate, contumacious and unjustified infraction of the conditions imposed by the Court". It is needless to say that if the Court cannot cancel bail, if violation of condition is not wilful or deliberate, it is only reasonable to hold that such violation (which is not wilful or intentional) shall also not lead to an automatic cancellation of bail bond under Section 446-A of the Code."

In the present case also, the bail order alongwith personal bond and surety bonds of the petitioner have been cancelled as the petitioner did not appear on the date fixed before the trial Court because of noting down a wrong date, which has been stated to be inadvertent.

Keeping in view the fact that the petitioner was regularly appearing before the trial Court but only on one date i.e. 05.07.2022, he could not appear as he wrongly noted the date as 07.07.2022 instead of 05.07.2022, it appears that there was no intention on his part to remain absent. Moreover, the petitioner is ready and willing to surrender and join the proceedings and also to abide by all terms and conditions to be imposed by this Court or by the trial Court. In case one opportunity is granted to the petitioner, no prejudice shall be caused to any party, rather his joining the proceedings would ensure finalization of proceedings. The explanation

offered by the petitioner for his non-appearance appears to be probable and the same is accepted.

Considering the above, the present petition is allowed and impugned order dated 05.07.2022 (Annexure P-4) passed by the learned Judicial Magistrate Ist Class, Ludhiana, is set aside subject to payment of costs of Rs. 10,000/- to be deposited by the petitioner with the ***“Poor Patients’ Welfare Fund, PGIMER, Chandigarh”*** and the said amount would be spent for the treatment of poor patients within the knowledge of its Medical Superintendent. The petitioner is directed to appear before the trial court on or before 06.12.2022 and submit his undertaking by way of affidavit before the trial Court that he will attend the Court proceedings regularly unless specifically exempted by the Court. The petitioner is allowed to remain on the same bail bonds and surety bonds.

In case, the petitioner does not appear on the date fixed i.e. 06.12.2022, then the instant petition shall be deemed to have been dismissed.

Disposed of in the abovesaid terms.

November 23, 2022

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No