

CRM-M-53842 of 2022

:1:

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

131

CRM-M-53842 of 2022

Date of Decision: November 21, 2022

Naresh Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Yagyaang Ajay, Advocate
for the petitioner.

AMAN CHAUDHARY, J.

The present petition under Section 482 of the Cr.P.C. has been for quashing the impugned order dated 1.11.2022 (Annexure P-9), passed by Judge, Special Court, Moga, whereby the bail of the petitioner was cancelled, bail bonds have been cancelled and non-bailable warrants of arrest have been issued.

Learned counsel for the petitioner contends that in the FIR lodged against him, petitioner was granted regular bail vide order dated 16.04.2020, Annexure P-2, whereafter he had been regularly appearing before the Court except on 29.11.2021, on account of fact that the learned counsel for the petitioner had informed him that he does not need to present as he will inform to the Court that petitioner has been granted bail. He submits that believing the learned counsel, the petitioner did not appear. Vide order dated 29.11.2021, his bail was cancelled and non-bailable warrants were issued for 28.01.2022. However, he inquired the next date of hearing from his learned counsel which was 28.01.2022. The said day was declared as a holiday and the case was taken on 31.01.2022, due to the

change of dates and miscommunication regarding the same, the petitioner could not appear. Subsequently, on 05.05.2022, the petitioner was suffering from fever and had requested his counsel to file an application for exemption, which he assured would be filed but the same was not so done and non-bailable warrants were issued by the trial Court on 05.05.2022 and case was adjourned to 19.7.2022. On 19.07.2022, due to a death of a family member, the petitioner was unable to appear, but the application for exemption as requested by him to his counsel was not filed and fresh non-bailable warrants issued for 20.09.2022. On which date, the bail application for co-accused was filed, however, that of the petitioner was not filed. Petitioner had filed an application for grant of anticipatory bail before this Court which was withdrawn on 11.11.2022.

He, however, submits that the petitioner is ready and willing to join the proceedings, and prays that one opportunity may be granted for the petitioner to surrender before the learned trial Court, which may even be, subject to payment of costs. In support of his arguments learned counsel for the petitioner relies upon the orders of this Court in CRM-M-38277-2022 dated 26.08.2022, in the case of “Surjit Singh Vs. State of Punjab”, CRM-M-39000-2022, titled as “Raghav vs. State of Punjab”, decided on 9.9.2022 and CRM-M-36490-2022, “Major Singh vs. State of Punjab”, decided on 15.9.2022.

Notice of motion.

Mr. Manipal Singh Atwal, DAG, Punjab, accepts notice on behalf of respondent-State.

Per contra, learned State counsel opposes the same and submits the impugned order has been rightly passed by the learned trial Court.

Heard.

The explanation offered by the petitioner for his non-appearance in this case before the trial Court seems to be justified. Moreover, the very purpose of issuance of non-bailable warrants, is to compel and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

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:

Conclusion:-

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.”

In view of the facts and circumstances of this case and the judgments referred to above, the impugned order dated 1.11.2022 (Annexure P-9), is set aside, subject to deposit of Rs.10,000/- with the Poor Patients Welfare Fund, PGIMER, Chandigarh, <https://pgimer.edu.in/>. The petitioner is directed to surrender before the trial Court on or before 30.11.2022 and furnish his fresh bail/ surety bonds. On so doing, the trial

Court shall release him on bail by imposing 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. He shall also surrender his passport and will not leave the country without prior permission of the Court or the trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

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.

November 21, 2022

Rimpal

**(AMAN CHAUDHARY)
JUDGE**

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