

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-53919-2022 (O&M)

Date of decision: 21.11.2022

BALWINDER SINGH @ BALWINDER

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sanjeev Kumar Banga, Advocate
for the petitioner.

AMAN CHAUDHARY. J.

Present petition has been filed for quashing order dated 20.04.2022 passed by Learned Chief Judicial Magistrate, Fatehgarh Sahib vide which bail order of the petitioner was cancelled and non-bailable warrants of arrest were issued in case FIR No.62 dated 18.07.2017 under Sections 406, 420, 120-B IPC (Sections 465, 467, 468 and 471 IPC added later on) registered at Police Station Bassi Pathana, District Fatehgarh Sahib.

Learned counsel contends that the above-mentioned FIR was lodged on 18.07.2017, wherein the petitioner was released on anticipatory bail vide order dated 18.08.2017, Annexure P-2. Challan in this case was prepared on 06.07.2020 and was filed on 06.07.2020. Thereafter, no charges were framed as the case was fixed for supplementary challan of co-accused Karan Kumar, the petitioner appeared on 06.04.2022 as is reflected in the order passed on the said dated

Annexure P-3, wherein also it was mentioned that the case is pending for supplementary challan. On the next date of hearing i.e. 20.04.2022, the petitioner was unable to appear, having noted down wrong date and consequently is bail order was cancelled and bail/surety bonds were forfeited to the State and non-bailable warrants of arrest for 13.07.2022, Annexure P-4. Thereafter, the petitioner approached learned Sessions Judge for grant of anticipatory bail, which was allowed on 12.10.2022, Annexure P-5, wherein the petitioner was granted 7 days time to furnish fresh bail bonds which he could not furnish on account of the fact that he was not resident of the said District.

Learned counsel contends that the absence of the petitioner was neither willful nor deliberate and but for the reasons 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.

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 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.”*

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 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 20.04.2022 passed by learned Chief Judicial Magistrate, Fatehgarh Sahib, is set aside, subject to deposit of Rs.5,000/- with the Punjab and Haryana High Court Employees Welfare Fund at Chandigarh. The petitioner is directed to surrender before the trial Court on or before 10.12.2022, before the trial Court and furnish his fresh bail/surety bonds. On doing so, the trial Court shall release him on bail by imposing 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

November 21, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>