

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

**CRM-M-54303-2022**  
**Date of Decision: 22.11.2022**

RAKESH KUMAR

...Petitioner

Versus

STATE OF HARYANA

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. ArpandeepNarula, Advocate  
for the petitioner.

Mr. AmrikNarwal, D.A.G., Haryana.

**HARSH BUNGER, J. (ORAL)**

Prayer in the present petition filed under Section 482 of Code of Criminal Procedure, is for quashing/setting aside of impugned order dated 03.09.2019 (Annexure P-4), whereby, the bail of the petitioner was cancelled and his bonds were forfeited to the State on account of his non-appearance on one date in case FIR No.064 dated 17.02.2018 registered under Sections 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Sadar, Fatehabad and his presence has been ordered to be secured through non-bailable warrants.

Learned counsel for the petitioner submits that the petitioner was earlier admitted to bail, however on account of his absence on 10.09.2018 before the trial Court, his bail was cancelled and the bail bonds were forfeited to the State. However, he surrendered before the trial Court on 15.03.2019 and was sent in judicial custody. Thereafter, the petitioner filed

second bail application, which was allowed vide order dated 27.03.2019 (Annexure P-2) by the learned Additional Sessions Judge, Fatehabad. It is submitted that thereafter, charges were framed by the trial Court vide order dated 14.05.2019.

Learned counsel for the petitioner further submits that due to communication gap between the petitioner and his counsel appearing before the trial Court, the petitioner could not appear before the trial court on 03.09.2019, therefore, the bail of the petitioner was cancelled and his bonds were forfeited to the State. He contends that on 03.09.2019, the case was adjourned to 18.10.2019; however since the Presiding Officer was on leave on the said date, the case was taken up on 16.10.2019 itself and was adjourned to 12.12.2019. Likewise, even on 12.12.2019, the Presiding Officer was on leave and the case was taken up on 11.12.2019 itself and was adjourned to 04.03.2020. It is contended that on 04.03.2020, the non-bailable warrants, issued against the petitioner and other accused, were received back unexecuted, accordingly non-bailable warrants were again ordered against the petitioner and other accused, however the surety of the petitioner appeared on 04.03.2020 and made a statement that he will produce the petitioner on the next date of hearing. Thereafter, it is submitted, that the case was adjourned on various dates on account of Covid-19 pandemic and the petitioner was under the *bonafide* impression that in case of requirement, his counsel appearing before the trial Court would intimate him. It is submitted that no notice / summons / warrants etc. were served upon the

petitioner and it was only recently that he learnt about the impugned order dated 03.09.2019 (Annexure P-4), whereby, his bail was cancelled and bonds were forfeited to the State on account of his non-appearance on 03.09.2019 and his presence was ordered to be secured through non-bailable warrants.

Learned counsel further 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 on account of the reasons stated above. It is submitted 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 on two occasions and has not followed the conditions of bail, hence, the present petition is liable to be dismissed. It is further submitted that if the Court is inclined to interfere in this case, then strict conditions are liable to be imposed upon the petitioner, so as to ensure his presence on each date during trial.

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 impugned order dated 03.09.2019 (Annexure P-4), reflects that the trial Court proceeded to pass the order on account of absence of petitioner on 03.09.2019. 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.

Somewhat similar 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 alongwith bonds of the petitioner have been cancelled as he did not appear on the date fixed before the trial Court which is stated to be happened due to communication gap between him and his counsel appearing before the trial Court and the subsequent situation arising on account of Covid-19 *pandemic*, which has been stated to be inadvertent.

Keeping in view the peculiar facts and circumstances of the case that the petitioner could not appear on the date fixed before the trial Court because of some communication gap between him and his counsel appearing before the trial Court and also the subsequent situation arising on account of Covid-19 *pandemic*, coupled with the fact that he 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; this Court is

inclined to afford one last opportunity to the petitioner to mend his ways, making it very clear that in case, he repeats the offence or absents himself from any hearing before the trial Court, except where exempted from appearance by the trial Court, then his bail shall automatically stand cancelled and it shall also be a factor for future bail applications by the petitioner. Moreover, joining of proceedings by the petitioner, would ensure finalization of proceedings.

Accordingly, the present petition is disposed of with a direction to the petitioner to surrender before the trial Court on or before 15.12.2022 by furnishing an undertaking before the trial Court that he will attend the Court proceedings regularly and will not leave the country without prior permission of the Court and abide by all terms and conditions to be imposed by the trial Court. It is directed that the petitioner be released by the trial Court upon his furnishing adequate surety/bail bonds to its satisfaction subject to payment of cost of Rs. 10,000/- to be deposited with the trial Court in the Legal Aid Fund.

In case, the petitioner does not appear on or before the date fixed i.e. 15.12.2022, then the instant petition shall be deemed to have been dismissed.

At the time of release of the petitioner, Station House Officer, Police Station Sadar, Fatehabad shall be informed. The petitioner shall furnish his mobile number to the Station House Officer and shall keep his mobile's location on till the conclusion of the trial. The petitioner shall also appear in the concerned police station on every alternate Monday till the

conclusion of the trial. These additional conditions are being imposed in this case owing to the fact that earlier also the petitioner had absented himself from the proceedings, which had delayed the conclusion of the trial.

Disposed of in the above-said terms.

**November 22, 2022**

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**(HARSH BUNGER)**

**JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No