

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

**CRM-M-53923-2022
Date of Decision: 09.12.2022**

Harish Garg

..... Petitioner

Versus

Simran Kalra

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Surinder Garg, Advocate
for the petitioner.

None for the respondent.

HARSH BUNGER J. (ORAL)

Present petition is filed under Section 482 Cr.P.C. for quashing of order dated 29.09.2022 (Annexure P-2), passed by the Judicial Magistrate Ist Class, Abohar in Complaint No.NACT-1539-2016 dated 30.11.2016, titled as “*Simran Kalra Vs. Harish Garg*”, vide which bail of the petitioner was cancelled, his bail bonds/surety bonds were cancelled/forfeited to the State and non-bailable warrants were ordered to be issued against him. Petitioner has also challenged order dated 26.10.2022 (Annexure P-3), vide which petitioner was ordered to be summoned through proclamation under Section 82 Cr.P.C.

proceedings under Section 138 of the Negotiable Instruments Act, the petitioner was admitted to bail and thereafter he had been attending the Court proceedings regularly. Sometimes, it was difficult for the petitioner to visit Abohar, which is 300 km. away from Zirakpur, so the petitioner always filed exemption applications, which were allowed by the trial Court. Learned counsel submits that on 29.09.2022, the petitioner could not appear before the trial Court because he was not having good health and he could not even inform the same to the counsel representing him in the trial Court and due to the said communication gap, no exemption application could be moved. It is further submitted that on the said date (29.09.2022), the learned trial Court cancelled the bail of the petitioner and his bail bonds/surety bonds were ordered to be forfeited to the State. Learned counsel submits that there was no intention on the part of the petitioner to delay the proceedings and his absence before the trial court was neither intentional nor deliberate but for the aforesaid reason. It is also stated that the next date before the trial Court is now fixed for 14.12.2022. 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.

During the course of hearing, learned counsel for the petitioner has handed over a copy of order dated 28.03.2022, passed by the Judicial Magistrate Ist Class, Abohar in aforesaid Complaint No.NACT-1539-2016, which reads as under:

“Cross examination of CW1 Simran Kalra recorded. However, today accused Harish Garg has suffered a statement that he has

compromised with the complainant for an amount of Rs.4 Lac and the same will be payable in two installments of Rs.2 Lac each and first will be paid on 13.05.2022 and second on 15.09.2022 and failing which he shall be liable to pay the entire cheque amount to the complainant and on the other hand, complainant is agree with the said statement of accused. Heard. In view of the statement of accused, file be put up on 13.5.2022 for making payment of first installment by the accused.

*Date of order: 28.03.2022
Amit Kukkar,
Stenographer Grade II*

*(Rajan Aneja)
Judicial Magistrate Ist Class
Abohar. UID-PB0559”*

Learned counsel for the petitioner submits that due to certain unforeseen circumstances, the petitioner could not honour the commitment as recorded in the aforesaid order dated 28.03.2022 and submits that he is ready and willing to honour the same now. In order to substantiate the said submission, he has produced a crossed Cheque bearing No.049241 dated 08.12.2022, amounting to Rs.1,00,000/- drawn in the name of respondent-Simran Kalra, in Court today, a photocopy of which is taken on record, subject to all just exceptions, and the original is being returned to learned counsel for the petitioner for its onward transmission to the respondent in the trial Court.

Learned State counsel 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.

I have 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 29.09.2022 (Annexure P-2), reflects

that the trial Court proceeded to pass the said order on account of absence of

petitioner on one date i.e. 29.09.2022; 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 be 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 of the petitioner has been cancelled and his bail bonds/surety bonds have been forfeited to the State as the petitioner did not appear on the date fixed, i.e. 29.09.2022, before the trial Court because of the reason stated above.

Keeping in view the fact that the petitioner was regularly appearing before the trial Court, except on 29.09.2022 due to communication gap between the petitioner and his counsel appearing before the trial Court, 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. Petitioner is also ready to amicably settle the issue with the respondent. Keeping in view the above submissions of petitioner, in case one opportunity is granted to him, 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 disposed of and

impugned orders dated 29.09.2022 (Annexure P-2) and 26.10.2022 (Annexure P-3), passed by the Judicial Magistrate Ist Class, Abohar, are set aside subject to payment of costs of Rs.5,000/- to be deposited by the petitioner with the “**Poor Patients’ Welfare Fund, PGIMER, Chandigarh**”, which 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 14.12.2022 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.

The petitioner is directed to hand over a crossed cheque bearing No.049241 dated 08.12.2022, amounting to Rs.1,00,000/- drawn in the name of respondent-Simran Kalra to her in the trial Court. Further, since the petitioner has shown his willingness to amicably settle the dispute with the respondent, accordingly the trial Court may call the parties concerned and explore the possibilities of amicable resolution of the dispute between them.

In case, the petitioner does not appear before the trial Court till 14.12.2022 or does not hand over the aforementioned crossed cheque to the respondent then the instant petition shall be deemed to have been dismissed.

Disposed of in the abovesaid terms.

09.12.2022

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No