

CRM-M-53724-2022

:1:

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CRM-M-53724-2022

Date of Decision: November 18, 2022

Rajiv Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Pankaj Gupta, Advocate
for the petitioner.

AMAN CHAUDHARY, J.

The present petition under Section 482 of the Cr.P.C. read with Section 438 Cr.P.C. has been filed for quashing the impugned order dated 30.03.2022 (Annexure P-2), passed by Judicial Magistrate Ist Class-IV, Jalandhar, whereby non-bailable warrants had been issued against the petitioner in complaint case i.e. NACT-1808-2016 titled Davinderjit Singh Chawla Vs. Mahalakshmi Steel Corporation and others, due to his non appearance in a bailable offence under Section 138 of Negotiable Instruments Act and to release the petitioner on bail in the event of his arrest.

Learned counsel for the petitioner submits that he is not pressing the petition under Section 438 Cr.P.C. but only seeking quashing of the order, Annexure P-2.

Learned counsel contends that the complaint under Section 138 of the Negotiable Instruments Act was filed by respondent No.2 on

07.05.2016 against the petitioner and his proprietorship concern, wherein after receipt of summons, the petitioner appeared before the trial Court and was released on bail. He further contends that the marriage of the petitioner was to be solemnized in Australia on 23.03.2022, for which purpose he left India on 26.02.2022. In this regard reference is made to copy of the marriage certificate dated 12.04.2022, Annexure P-1 affirming the aforesaid fact and the passport showing the return of the petitioner on 02.11.2022, Annexure P-3. It is his submission that due to the reasons aforesaid, the petitioner was unable to appear on 30.03.2022, leading to issuance of non-bailable warrants against him vide order dated 30.03.2022, Annexure P-2, returnable for 31.05.2022. Learned counsel contends that the absence of the petitioner was neither willful nor deliberate but for reasons mentioned aforesaid. He submits that since the petitioner returned on 02.11.2022, whereupon he immediately filed this petition on 15.11.2022.

Learned counsel makes a reference to para Nos.15 and 16 of this petition to contend that petitioner is ready and willing to pay the entire cheque amount of Rs.25 lakhs to the complainant and also deposit 10% of the amount i.e.Rs.2.5 lakhs with the District Legal Services Authority, copies of two bank drafts prepared by the petitioner in favour of respondent No.2, total amounting to Rs.23.70 lakh have been appended to the petition as Annexure P-5. Learned counsel further contends that he has also brought the original drafts as also draft of Rs.1.30 lakhs, being the balance amount.

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, CRM-M-3649-2022, “Major Singh vs. State of Punjab”, decided on 15.9.2022, Naveen Rao vs. Central Bureau of Investigation (CBI) ACB, Chandigarh, CRM-M-29461-2018, decided on 18.7.2018, Dimple Kumar vs. State of Punjab 2017(1) RCR (CrI.), 602, Gurbir Singh Mundi vs. State of Punjab and another CRM-M-49283-2021, decided on 16.12.2021, Hardev Kaur vs. State of Punjab 2018(2) Law Herald 1256 and Jasbir Kaur vs. State of Punjab and another, CRM-M-25115-2022, decided on 2.6.2022.

Notice of motion.

Mr. Gurdarshan Sidhu, Assistant AG, Punjab, accepts notice on behalf of respondent-State and Mr. Angad Parmar, Advocate accepts notice on behalf of respondent No.2.

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

Learned counsel for respondent No.2 opposes the petition on the ground that the order passed was legal and valid and the petitioner had not informed the Court or sought permission from it.

Heard.

It is apparent from Annexure P-3, being the passport of the petitioner that he returned from Australia on 02.11.2022 and that petition was filed on 15.11.2022, shows his bonafide to join the proceedings as well coupled with the fact that he has both averred in para Nos.15 and 16 of the

petition and has also brought the original drafts to Court for the entire amount outstanding and has only prayed for one opportunity to join the proceedings.

This Court in the case of **Naveen Rao** (supra) has held thus:-

“In the present case also, the bail/surety bonds have been cancelled as the petitioner left India without prior permission of the Court. An application for exemption from personal appearance was also moved, which was dismissed. The petitioner is NRI and he went abroad without seeking any permission from the Court, which has been stated to be inadvertent as he did not go through the terms and conditions of bail but the circumstances were beyond his control. The petitioner immediately came back to India and came to know that his bail bonds have been cancelled. There was no intention on his part to remain absent or to avoid the Court proceedings. The petitioner remained ill when he was abroad, remained there for a period of 20 days and could not come back immediately.”

In re: **Hardev Kaur's** case (supra) , the order of proclamation was set aside in a case, where the compromise between the parties had been arrived at and no objection had been given by the complainant for setting aside the same.

In the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Indian Resident lady residing in Canada and proclamation proceedings had been initiated while she was not in India, as such, the order of proclamation was set aside.

This Court in the case of **Parminder Kaur Motay vs. State of Punjab and another**, CRM-M-49863-2022, decided on 31.10.2022, had in order to secure of justice, set aside the proclamation proceedings against the petitioner, who was residing abroad.

The very purpose of issuance of summons, warrants etc. 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.

Adverting to the facts of the present case inasmuch as it was due to unavoidable circumstances, 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 his 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 deserves to be allowed.

In view of the facts and circumstances of this case and the judgments referred to above, the impugned order dated 30.03.2022, Annexure P-2, is set aside, subject to deposit of Rs.25,000/- with the Punjab and Haryana High Court Bar Association. The petitioner is directed to surrender before the trial Court on or before 24.11.2022 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 18, 2022
rimpal/gsv

(AMAN CHAUDHARY)
JUDGE

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