

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

**CRM-M-53732-2022
Date of Decision: 30.11.2022**

Ravi Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Kuldeep Singh Siwach, Advocate
for the petitioner.

Mr. Ram K.Singla, DAG, Haryana.

HARSH BUNGER J. (ORAL)

Prayer in the present petition filed under Section 482 of Code of Criminal Procedure is for setting aside order dated 15.02.2022 (Annexure P-67), passed by the Sessions Judge, Bhiwani, whereby bail order of the petitioner was cancelled and his bail/surety bonds were forfeited to the State on account of his non-appearance on one date in case FIR No.358 dated 17.09.2016 (Annexure P-1), under Sections 15 and 27(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Tosham, District Bhiwani and his presence has been ordered to be secured by issuance of arrest warrants.

Learned counsel for the petitioner submits that the petitioner was admitted to bail vide order dated 26.04.2017 (Annexure P-3), passed by this Court in CRM-M-44063-2016, and thereafter he had been attending the

Court proceedings regularly. When the matter was listed before the trial Court on 20.03.2020, an application was moved by the petitioner for exemption of personal appearance, which was accepted and the matter was adjourned to 20.04.2020. Thereafter, on subsequent dates, the case was adjourned due to the fact that the Courts were functioning under certain restrictions due to Covid-19 *pandemic* and when the Courts started functioning normal, the case was adjourned to 15.02.2022. However, on said date, the petitioner could not appear before the trial Court as he was not informed by his counsel for the fixing of said date primarily on account of communication gap and restricted working of Courts due to Covid-19 circumstances. It is submitted that the petitioner learned about the fate of his case only on 27.09.2022, when his counsel informed that his bail bonds have been cancelled and forfeited to State on 15.02.2022. Learned counsel also 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 for the aforesaid reason. It is also stated that the next date before the trial Court is now fixed for 01.12.2022. 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.

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.

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 15.02.2022 (Annexure P-67), reflects that the trial Court proceeded to pass the said order on account of absence of petitioner on one date i.e.15.02.2022; 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 order alongwith bail bonds/surety bonds of the petitioner have been cancelled as the petitioner did not appear on the date fixed i.e. 15.02.2022 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 but only on one date, i.e. 15.02.2022, he could not appear due to communication gap between the petitioner and his counsel appearing before the trial Court on account of restricted working of Courts due to *Covid-19 pandemic*, 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. In case one opportunity is granted to the petitioner, no prejudice shall be caused to any

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 allowed and impugned order dated 15.02.2022 (Annexure P-67) passed by the learned Sessions Judge, Bhiwani, is 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**” and the said amount 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 06.12.2022 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.

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

In case, the petitioner does not appear before the trial Court till 06.12.2022 then the instant petition shall be deemed to have been dismissed.

Disposed of in the abovesaid terms.

30.11.2022

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No