

CRM-M-57541-2022

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

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CRM-M-57541-2022

Date of Decision: December 09, 2022

Kamal Kant Dewan

...Petitioner

Versus

M/s Mohinder Singh & sons and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Ms. Asha Bura, Advocate for
Mr. Aditya Grover, Advocate
for the petitioner.

AMAN CHAUDHARY, J.

The present petition under Section 482 of the Cr.P.C. has been filed for setting aside the impugned order dated 09.11.2022 (Annexure P-1), passed by CJID/JMIC, Patti, whereby the bail order of the petitioner was cancelled and bail bonds and surety bonds were forfeited to the State.

Learned counsel inter alia contends that the complaint under Section 138 of the Negotiable Instruments Act was filed against M/s V.I.R Foods Limited and others in which summons were issued against petitioner and Mohit Deewan, Directors. However, due to serious medical reasons, the petitioner who is suffering from Spinal Osteopenia, Cervico-Lumbar Spondylosis, is on medication and not able to walk properly due to the pain. It is not advisable for the petitioner to travel long distance. He could not appear due to the aforesaid reason, however, the other director Mohit Deewan had duly appeared on 09.11.2022. The application filed by the petitioner for seeking exemption, was not accepted and non-bailable

warrants were issued against him. He further submits that there is non-compliance of Sections 87, 89, 205, 441 and 446 Cr.P.C. inasmuch as the rejection of application, seeking exemption from personal appearance due to the aforesaid medical reasons, can not come within the ambit of absconding or disobeying the summons.

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 and CRM-M-36490-2022, “Major Singh vs. State of Punjab”, decided on 15.9.2022.

Notice of motion.

Mr. Manipal Singh Atwal, DAG, Punjab who has appeared on receipt of advance copy of the petition and opposes the same by submitting that the impugned order has been rightly passed by the learned trial Court.

In this case, notice has not been issued to respondent Nos.1 and 2 as no order prejudicial to their rights, is being proposed to be passed by this Court.

Heard.

The order of non-bailable warrants were passed on 09.11.2022 for 02.12.2022. The present petition has been filed on 29.11.2022 which

shows the bona fide of the petitioner to appear before the trial Court and join proceedings.

The very purpose of issuance of non-bailable warrants, 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 the petitioner was not well, thus could not appear before the trial Court, leading to the passing of the impugned order, which appears to be justified explanation of absence. 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 necessarily be construed as deliberate and willful. 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 petition deserves to be allowed.

In view of the facts and circumstances of this case and the judgments referred to above, the impugned 09.11.2022 (Annexure P-1), is set aside, subject to deposit of Rs.10,000/- to be paid to the complainant. The petitioner is directed to surrender before the trial Court on or before 16.12.2022 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.

December 09, 2022
Rimpal

(AMAN CHAUDHARY)
JUDGE

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