

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

**CRM-M-57238-2022
Date of Decision: 09.12.2022**

Parminder Singh @ Kala

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sandeep Verma, Advocate
for the petitioner.

Mr. Subhash Godara, Additional A.G., Punjab.

HARSH BUNGER J. (ORAL)

Present petition is filed under Section 482 Cr.P.C. for setting aside order dated 21.11.2022, passed by the Additional Sessions Judge, Patiala, vide which the bail granted to the petitioner on 14.03.2019 was cancelled and the bail bonds/surety bonds were cancelled/forfeited in case FIR No.4 dated 06.01.2019 (Annexure P-1), under Sections 306, 420, 467, 468, 471 and 506 IPC, registered at Police Station Kotwali Nabha, District Patiala.

Learned counsel for the petitioner submits that the petitioner was admitted to bail vide order dated 14.03.2019 (Annexure P-2), passed by the Additional Sessions Judge, Patiala, and thereafter he had been attending

the Court proceedings regularly but when the matter was listed before the trial Court on 21.11.2022, he could not appear before the Court due to medical emergency of his father. It is submitted that on the said date (21.11.2022), the learned trial Court cancelled the bail order of the petitioner along with his bail bonds/surety bonds, which were forfeited to 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 22.12.2022. 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.

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 21.11.2022 (Annexure P-3), reflects that the trial Court proceeded to pass the said order on account of absence of petitioner on one date i.e. 21.11.2022; 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.

A co-ordinate Bench of this Court vide judgment dated 18.07.2018, passed in CRM-M-29461-2018, titled as “**Naveen Rao Vs. Central Bureau of Investigation (CBI) ACB, Chandigarh**”, while considering somewhat similar issue, observed as under:

“- x - x -

Keeping in view the conduct of the petitioner as he came back immediately after a period of 20 days, it appears that there was no intention on the part of the petitioner to remain absent. It can be an inadvertent mistake/lapse on his part. Moreover, the petitioner is NRI and ready to abide by all terms and conditions to be imposed by this Court or by the trial Court.

Same issue was there before the Kerala High Court in Mahesh vs. State of Kerala, 2011 (1) Cri.C.C. 834 wherein the condition of bail was violated and due to absence of the accused-petitioner, bail was cancelled. The relevant portion of said judgment is reproduced as under: -

“20. To cancel the bail under section 437(5) or 439(2) of the Code very cogent and overwhelming reasons are also to be stated. The Court shall not cancel bail in a routine manner, under section 437(5) or 439(2) of the Code, as per law. This is the settled position of law. But, the position under Section 446-A of the Code is totally different. If the Magistrate Court is satisfied that there is breach of condition of bail bond and thereby, forfeiture of the bond, the bond automatically stands cancelled under Section 446-A of the Code.

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/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.

Accordingly, the present petition is allowed and the petitioner is directed to surrender before the trial Court on the next date of hearing i.e., 19.07.2018 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. He is directed to be released by the trial Court by furnishing adequate surety/bail bonds to its satisfaction subject to payment of cost of `25000/- to be deposited with the trial Court.

- x - x -”

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. 21.11.2022, 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. 21.11.2022, he

could not appear due to his father's medical emergency, 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 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 order dated 21.11.2022 (Annexure P-3) passed by the Additional Sessions Judge, Patiala, 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 22.12.2022 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.

In case, the petitioner does not appear before the trial Court till 22.12.2022 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