

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

CRM-M-57335-2022

Date of Decision: 21.12.2022

MANJIT SINGH

...Petitioner

Versus

KURBAN ALI

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Parunjeet Singh, Advocate
for the petitioner.

Mr. Sunil Kumar, Advocate
for the respondent.

HARSH BUNGER, J. (ORAL)

Prayer in the present petition filed under Section 482 of Code of Criminal Procedure, is for quashing of impugned order dated 20.10.2022 (Annexure P-7) passed by the learned Additional Sessions Judge, Chandigarh, whereby, the order dated 18.10.2021 (Annexure P-3) granting concession of suspension of sentence to the petitioner was made ineffective due to his absence being violative of condition of bail.

Learned counsel for the petitioner submits that the petitioner was convicted for committing the offence under Section 138 of the Negotiable Instruments Act vide order dated 13.03.2020 passed by the learned Judicial Magistrate First Class, Chandigarh for dishonor of Cheque No.030127 dated 18.06.2018 for Rs.3,00,000/- drawn on Union Bank of India, Sector 32-D, Chandigarh.

The petitioner has challenged the said order dated 13.02.2020 by way of filing CRA No.59/2021 dated 14.10.2021 along with application

for suspension of sentence, upon which, notice in the appeal was issued and the sentence of the petitioner was suspended vide order dated 18.10.2021 by the learned Additional Sessions Judge, Chandigarh.

Learned counsel for the petitioner has submitted that after granting the concession of suspension of sentence, the petitioner through his counsel was regularly appearing before the lower Appellate Court except on one date i.e. 20.10.2022 due to strike called by the Chandigarh Bar Association and on account of his non-appearance, order dated 18.10.2021 granting him concession of suspension of sentence was made ineffective by the learned Additional Sessions Judge, Chandigarh vide order dated 20.10.2022 (Annexure P-7). It is submitted that on 21.10.2022, the petitioner had preferred an application for grant of anticipatory bail, which was dismissed for want of maintainability vide order dated 21.10.2022 passed by the learned Additional Sessions Judge, Chandigarh. Learned counsel submits that there was no intention on the part of the petitioner to delay the proceedings and the absence of the petitioner before the lower Appellate Court was neither intentional nor deliberate but on account of the reason stated above. It is submitted that the petitioner is ready and willing to appear before the lower Appellate 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 lower Appellate Court and to abide by all the terms and conditions to be imposed by this Court or by the lower Appellate Court.

Pursuant to the notice of motion issued on 08.12.2022, Mr. Sunil Kumar, Advocate, puts his appearance and has filed his *Memorandum of Appearance* on behalf of the respondent in the Court and the same is taken on record, subject to all just exceptions. He submits that

since the petitioner has violated the conditions of bail, accordingly, he does not deserve any indulgence.

Heard the arguments of learned counsel for the petitioner as well as learned counsel for the respondent and have also perused the paper book as well as the impugned order.

A perusal of impugned order dated 20.10.2022 (Annexure P-7), reflects that the lower Appellate Court proceeded to pass the order on account of absence of petitioner on 20.10.2022. It is observed that 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.

This Court vide order 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 order dated 18.10.2021 (Annexure P-3) granting concession of suspension of sentence to the petitioner was made ineffective by the learned Additional Sessions Judge, Chandigarh vide order dated 20.10.2022 (Annexure P-7), as he did not appear on the date fixed, which is due to the reason, as stated above.

Keeping in view the peculiar facts and circumstances of the case and considering the fact that the petitioner is ready and willing to appear and join the proceedings and also to abide by all terms and conditions to be imposed by this Court or by the lower Appellate Court; this Court is inclined to afford one last opportunity to the petitioner to mend his ways. Moreover, joining of proceedings by the petitioner, would ensure finalization of proceedings.

In view of the above, the present petition is disposed of with a direction to the petitioner to appear before the lower Appellate Court on or before 05.01.2023 by furnishing an undertaking 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 lower Appellate Court. In case, the petitioner appears before the lower Appellate Court on or before 05.01.2023, then the lower Appellate Court shall suspend the sentence of the petitioner on his

furnishing adequate surety/bail bonds to its satisfaction subject to payment of cost of Rs. 5,000/- to be deposited in the Legal Aid Fund.

In case, the petitioner does not appear before the lower Appellate Court on or before the date fixed i.e. 05.01.2023, then the instant petition shall be deemed to have been dismissed.

Disposed of in the above-said terms.

December 21, 2022
gurpreet

(HARSH BUNGER)
JUDGE

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