

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

135

CRM-M-56589-2022 (O&M)
Date of decision: 05.12.2022

PRITPAL SINGH SIDHU

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Deepak Aggarwal, Advocate
for the petitioner.

AMAN CHAUDHARY. J.

Present petition has been filed for quashing of order dated 07.07.2022, Annexure P-13 passed by Judicial Magistrate Ist Class, Bathinda in FIR No.79 dated 27.04.2017 under Section 406 IPC registered at Police Station Kotwali, District Bathinda, whereby the learned Judicial Magistrate Ist Class, Bathinda has declared the petitioner as proclaimed offender.

Learned counsel contends that in the FIR lodged against the petitioner, he was granted interim bail by this Court vide order dated 26.09.2017, Annexure P-2, directing the petitioner to join investigation within five days from the said date and to surrender his passport before the Investigating Officer and in the meanwhile he was released on interim bail and with a pre-condition of deposit of Rs.35,000/- for grant of interim bail, which the learned counsel submits was the value of the motorcycle regarding which the dispute had arisen. The petitioner joined the investigation on 01.10.2017 deposited Rs.35,000/- were deposited, whereafter, same was confirmed vide order dated 08.11.2017, while recording the statement of the learned State counsel that petitioner had joined investigation was no longer required and nothing

was to be recovered from him, besides this fact had confirmed the deposit of Rs.35,000/-. Learned counsel would submit that challan was presented on 23.02.2018, however in absence of the petitioner, as he was never served, on account of which he was declared proclaimed offender even vide order dated 11.07.2019, Annexure P-4. On coming to know of the aforesaid fact, the petitioner sought and was granted bail after surrendering before the Trial Court vide order dated 13.02.2020, Annexure P-5. It is his further submission that after the Covid-19 pandemic, the petitioner did not come to know of the resumption of the Court proceedings as the Advocate appearing on behalf of the petitioner had left practice and only on inquiries made by him, he came to know that vide order dated 07.02.2022, he was declared proclaimed offender. He further submits while referring to para 18 of the petition that there is every chance of compromise between the parties but since the petitioner has been declared as proclaimed offender, he is unable to appear before learned Trial Court for the said purpose. Learned counsel for the petitioner submits that his absence was neither wilful nor deliberate as the same was on the ground that his application under Section 245 CrPC was under consideration. He seeks only one opportunity to surrender and appear before the Court to join the proceedings, which may even be subject to costs.

Notice of motion.

Mr. Kamalpreet Bawa, AAG Punjab accepts notice and submits that the impugned order has been rightly passed by the learned trial Court on account of non-appearance of the petitioner.

Heard.

The explanation offered by the petitioner for his non-appearance in this case before the trial Court seems to be justified. It cannot be construed as a deliberate

and willful absence.

This Court in **Major Singh Vs. State of Punjab**, CRM-M-36490-2022, decided on 15.9.2022, in somewhat similar circumstances, while setting aside the order, observed thus:

“This Court while noticing the bonafide of the petitioner; explanation given for his absence being justified; the object to be achieved being to secure the presence of the petitioner in the proceedings; expedition of trial and its early culmination being in the interest of the parties; in order to meet the ends of justice; judgments referred to above being applicable to the instant case, is allowing this petition, though deeming it appropriate to impose certain conditions for meticulous adherence at the hands of the petitioner.

*In view of the forgoing conclusion and in the peculiarity of the facts and circumstances of the case, as also held by the Coordinate Bench of this Court in the cases of **Naveen Rao** (supra) and **Dimple Kumar** (supra) and in the interest of justice, the impugned order dated 19.7.2022, Annexure P5, is hereby set aside.”*

Adverting to the facts of the present case 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 07.07.2022, Annexure P-13 passed by Judicial Magistrate Ist Class, Bathinda, is set aside, subject to deposit of Rs.10,000/- with the Bar Association, Bathinda.

The petitioner is directed to surrender before the trial Court on or before 13.12.2022 before the trial Court and furnish his fresh bail/surety bonds. On doing so, 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.

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.

(AMAN CHAUDHARY)
JUDGE

December 05, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>