

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

**CRM-M-59636-2022
Date of Decision: 20.12.2022**

Tejpal @ Teji

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sanyam Khetarpal, Advocate
for the petitioner.

HARSH BUNGER J. (ORAL)

Present petition is filed on behalf of the petitioner under Section 482 Cr.P.C. for quashing of impugned order dated 26.11.2021 (Annexure P-4), passed by the Additional Sessions Judge, Jalandhar, in proceedings arising out of FIR No.57 dated 19.07.2018 (Annexure P-1), under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity, 'the NDPS Act'), registered at Police Station Nurmehal, District Jalandhar, vide which bail of the petitioner has been cancelled, his bail bonds/surety bonds have been forfeited to the State and petitioner has been summoned through non-bailable warrants.

Learned counsel for the petitioner submits that the petitioner

was admitted to bail vide order dated 11.10.2018 (Annexure P-2), passed by

the Judge, Special Court, Jalandhar, and thereafter he had been attending the Court proceedings regularly but when the matter was listed before the trial Court on 26.11.2021, he could not appear due to his ill health as well as that of his old parents and an application for exemption from personal appearance was filed by the counsel representing the petitioner before the trial Court on 26.11.2021, but the Court did not entertain the same. Learned counsel submits that on the said date (26.11.2021), the learned trial Court cancelled the bail of petitioner, his bail bonds/surety bonds were forfeited to the State and non-bailable warrants were ordered to be issued against him. Learned counsel submits that there was no intention on the part of 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 21.12.2022. 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.

Notice of motion.

At the asking of the Court, Mr. Vinay K.Gupta, AAG, Punjab, who is present in the Court, accepts notice on behalf of the respondent/State. He though opposes prayer of the petitioner raised in the instant petition by stating that he has jumped the bail and has not followed the conditions of bail and he was also involved in other cases.

Learned counsel for the petitioner has handed over copies of orders dated 21.09.2018 and 07.09.2022, passed by the Judge, Special

Court, Jalandhar, in two different cases, being FIR No.101 dated 06.10.2017, under Section 22 of the NDPS Act, registered at Police Station Nurmahal, Jalandhar and FIR No.454 dated 28.12.2017, under Section 22 of the NDPS Act, registered at Police Station Phillaur, District Jalandhar, respectively, wherein the petitioner has already undergone the sentences; which are taken on record, subject to all just exceptions.

The fact that petitioner has already undergone sentence imposed vide the aforesaid orders is not denied by learned State counsel, however, he submits that since the petitioner is ready to surrender then strict conditions be imposed upon him.

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 26.11.2021 (Annexure P-4) reflects that the trial Court proceeded to pass the impugned order on account of absence of petitioner on 26.11.2021. 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 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 of the petitioner was cancelled and his bail bonds/surety bonds were forfeited to the State as he did not appear on the date fixed i.e. 26.11.2021, before the trial Court because of the reason stated above, however he had moved the application for exemption from personal appearance stating the aforementioned reason.

Keeping in view the fact that the petitioner was regularly appearing before the trial Court but on 26.11.2021, he could not appear due to his own ill health and his old parents', on account of which he had also sought exemption from personal appearance, it appears that there was no intention on his part to remain absent, however, it cannot be ignored that the order cancelling bail and bail bonds/surety bonds was passed on 26.11.2021 and the present petition has been filed after one year. However, this Court is inclined to afford one 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 surrender before the trial Court on 21.12.2022 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. In case, the petitioner surrenders before the trial Court on 21.12.2022 then he be released by the trial Court upon his furnishing adequate surety/bail bonds to its satisfaction subject to payment of costs of Rs.10,000/- to be deposited with the trial Court in the Legal Aid Fund.

In case, the petitioner does not appear before the trial Court on the date fixed, i.e. 21.12.2022, then the instant petition shall be deemed to have been dismissed.

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

Disposed of in the abovesaid terms.

20.12.2022
Apurva

(HARSH BUNGER)
JUDGE

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