

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

CRM-M-1384-2023

Date of Decision: 18.01.2023

JASPAL SINGH

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Amit Arora, Advocate
 for the petitioner.

Mr. Harjinder S. Sidhu, AAG, Punjab.

HARSH BUNGER, J. (Oral)

The instant petition has been filed under Section 482 Cr.P.C for quashing of the impugned order dated 03.12.2021 (Annexure P-3) passed by Judicial Magistrate, Ist Class, Patti, District Tarn Taran, vide which the bail bonds and surety bonds of the petitioner stands cancelled and forfeited to the State due to his non-appearance before the trial Court on the date fixed. Further prayer is for quashing of order dated 31.08.2022 passed by Judicial Magistrate, Ist Class, Patti, District Tarn Taran (Annexure P-5) vide which the warrants of attachment has been issued against the petitioner and also for setting aside the warrant of attachment dated 17.12.2022 (Annexure P-6) passed in complaint bearing NACT No.463 dated 13.11.2018 titled as "Shangara Singh Vs. Jaspal Singh" under Section 138 of Negotiable Instruments Act, 1881.

Learned counsel for the petitioner submits that petitioner was granted bail vide order dated 07.12.2019 passed by learned Judicial Magistrate First Class, Patti. He further submits that after getting the

concession of bail, the present petitioner was regularly appearing before the trial Court. However, in the interregnum, due to Covid-19 pandemic, the hearing of the cases were restricted to extreme urgent cases as such the case involving petitioner stood adjourned to various dates by order. Ultimately, when the Courts started functioning, the case was fixed for hearing on various dates, but the petitioner could not appear before the trial Court and on account of non-appearance of petitioner, on dated 03.12.2021 non-bailable warrants were issued against the petitioner by Judicial Magistrate, Ist Class, Patti for 25.01.2022. 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 on account of communication gap between the petitioner and his counsel before Trial Court due to COVID-19 situation. Learned counsel further submits that in the present case the petitioner was never served with summons and in fact the matter between the complainant and petitioner already stands resolved and the complainant had assured the petitioner that as and when the courts resume working after COVID-19, he will withdraw his complaint. It is further submitted that the notices/ summons/ bailable warrants/ non bailable warrants were never served upon the petitioner and even the proclamation was not properly affected. Learned counsel submits that even otherwise, a perusal of the order dated 03.12.2021 would show that the bail of the petitioner was never cancelled and only the bail bonds and surety bonds were ordered to be forfeited to the State. It is stated that the learned Trial Court has erred in issuing warrants of attachment for payment of Rs. 7.5 Lakhs whereas the Cheque amount in complaint is only Rs. 1.5 Lakhs. In this regard, the prayer made in complaint under Section 138 Negotiable

Instruments Act reads as under:-

“It is, therefore, respectfully, prayed that the accused may kindly be summoned and punished according to law. The accused may further be directed to compensate the complainant for payment of amount of Cheque of Rs.1,50,000/- along with same amount of penalty plus expenses of litigation, in the interest of law and justice.”

Learned counsel submits that the petitioner is ready and willing to surrender before the trial Court and join the proceedings, if he be 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 opposes the 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, accordingly the petitioner is not entitled to any relief and prays for dismissal of this petition.

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 03.12.2021 (Annexure P-3) reflects that the trial Court proceeded to pass the said order on account of absence of petitioner on 03.12.2021. 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 Rs.25000/- to be deposited with the trial Court.

- x - x -"

Further a perusal of order dated 04.07.2022 would show that fresh proclamation was ordered against petitioner for 01.08.2022 and on 01.08.2022 the case was adjourned to 31.08.2022 as 30 days had not elapsed. Thus, it is apparent that 30 days clear notice was not issued in terms of Section 82 Cr.P.C. and hence, the petitioner was never declared PO, however vide order dated 31.08.2022 warrants of attachment was ordered to be issued, as per list of property.

also considering the submission of the petitioner that there was no intention on his part to remain absent, 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.

Accordingly, the orders dated 03.12.2021 passed by Judicial Magistrate First Class, Patti and all consequential proceedings are set aside. Petitioner is directed to surrender before the trial Court within 30 days from this order 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 then he be released by the trial Court upon his furnishing fresh surety bonds/bail bonds to its satisfaction subject to payment of cost of Rs. 5,000/- to be deposited in the concerned District Legal Services Authority.

However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case and any change in the address shall also be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer.

Disposed of in the above-said terms.

18.01.2023
Amandeep

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No