

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

120

CRM-M-3007-2023 (O&M)

Date of decision: 19.01.2023

SATNAM SINGH

....Petitioner(s)

Versus

AVTAR SINGH AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rishu Mahajan, Advocate
for the petitioner.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 Cr.P.C., for quashing of the order dated 29.11.2022, Annexure P-4 passed by the Judicial Magistrate 1st Class, Amritsar, District Amritsar whereby the petitioner has been declared proclaimed offender/person in NACT 5187 dated 17.09.2018 under Sections 138 of NI Act.

A complaint under Section 138 of NI Act was filed against the petitioner, wherein he was summoned vide order dated 20.09.2018 Annexure P-2. Thereafter, he was regularly appearing, as has been averred in para 4 of the petition and reliance has been placed on the case status. It is only on account of the petitioner having joined as a member of Kisan Union in *Andolan* and remained occupied with the agitation out of station for three months and due to miscommunication, was unable to contact his counsel or be in touch with his

family members, which resulted in non-appearance leading to passing of order dated 01.11.2021, whereby the bail was cancelled, his bail/surety bonds were forfeited to State, whereafter, he was declared proclaimed person/offender vide order dated 29.11.2022 Annexure P-4. He submits that proper procedure as envisaged under Section 82 CrPC has not been followed inasmuch as the fresh proclamation was issued on 17.10.2022 for 29.10.2022 Annexure P-5, which is shown to have been effected on 27.10.2022 granting him just two days instead of the requisite 30 days as envisaged by Section 82 CrPC and the warrant of attachment of the property of accused has been issued under Section 83 CrPC on 29.11.2022. To buttress his submission, he places reliance on the judgment in the cases of **Ashok Kumar vs. State of Haryana and another** 2013(4) RCR (CrI.) 550; **Rohit Kumar @ Raju vs. State of NCT, Delhi** 2008(1) RCR (CrI.) 101; as also on an order dated 09.04.2021, of this Court passed in CRM-M-15728-2021, titled as **Davinder Singh Chawla and another vs. State of Haryana and another**.

Notice of motion.

Mr. Manipal Singh Atwal, DAG Punjab who has appeared on receipt of advance copy of the petition, opposes the petition by submitting that the impugned order is legal and valid and has been rightly passed by the learned trial Court on account of non-appearance of the petitioner.

In this case, notice has not been issued to respondent No.1-complainant as no order prejudicial to his rights, is being proposed to be passed by this Court.

Heard.

The very purpose of issuance of non-bailable warrants, is to compel

and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

Adverting to the facts of the present case inasmuch as the petitioner had joined the *Andolan* being a member of Kisan Union and remained out of station in the agitation for three months due to which he lost contact with his counsel as well as his family members, thus could not appear before the trial Court, leading to the passing of the impugned order, which appears to be justified explanation of absence. At times, the accused can be prevented by sufficient reasons to put an appearance before the Court on a given date and every such absence cannot necessarily be construed as deliberate and willful. 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 secure the ends of justice and finding judgments referred to above being applicable to the instant case, the present petition deserves to be allowed.

In view of the facts and circumstances of this case and the judgments referred to above, the impugned order dated 29.11.2022, Annexure P-4 is set aside subject to the petitioner surrendering before the trial Court on or before 07.02.2023 and depositing Rs.10,000/- with the trial Court which be disbursed to the complainant forthwith and furnish his fresh bail/surety bonds. On so doing, 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. He shall also surrender his passport and will not leave the country without prior permission of the Court or the trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

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

January 19, 2023

M.Kamra/S.Sharma(syr)

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