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

**CRM-M No. 3475 of 2022
Date of Decision: 06.02.2023**

Lovejot Singh.

..... Petitioner

Versus

State of Punjab.

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Imaan Singh Khara, Advocate
for the petitioner.

Mr. Harjinder Singh Sidhu, Addl. AG, Punjab.

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 31.08.2022 (Annexure P-4), passed by the Judicial Magistrate Ist Class, Bathinda, in proceedings arising out of FIR No.210 dated 25.11.2018 (Annexure P-1), under Sections 353, 186, 427, 336, 148, 149 of IPC and Section 25 & 27 of Arms Act, 1959, registered at Police Station Nathana, District Bathinda, 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 08.12.2018 (Annexure P-2), passed by the Additional Sessions Judge, Bathinda, which was made absolute on 19.12.2018. Thereafter, he could not appear before the trial court due to the

reason that in the surge of Covid-19 Pandemic, the regular works in the courts remained closed/ suspended for a long time and the petitioner was having no knowledge regarding presentation of the *Challan* in the trial court as well as proceedings of Proclaimed Offender initiated against him. Learned counsel submits that the petitioner never received any notice or summon either from the Police Station Nathana or from the trial court regarding presentation of the *Challan*, and for this reason only he could not appear before the trial court on 31.08.2022 and on the said date, learned trial Court cancelled the bail of petitioner and his bail bonds/surety bonds were also 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. 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.

Upon notice of motion ordered by this Court on 23.01.2023, learned State counsel has filed reply by way of affidavit dated 05.02.2023 of Rashpal Singh, Deputy Superintendent of Police, Sub-Division Bucho, District Bathinda, on behalf of the respondent/State of Punjab in the Court today and the same is taken on record, subject to all just exceptions. Copy of the reply has been supplied to learned counsel for the petitioner in Court today.

Learned State counsel opposes the prayer of the petitioner raised in the instant petition by stating that he has not appeared before the trial court for a continuous period of two years and has jumped the bail by not following the conditions of bail, as a result of which learned trial court has cancelled his bail and forfeited his bail bonds and surety bonds to the State. He further states that the anticipatory bail application filed by the petitioner has also been dismissed by the court of Learned Additional Sessions Judge, Bathinda, vide order dated 14.12.2022 (Annexure P-5), since the absence of the petitioner before the trial court was wilful and intentional, so no ground is made out for quashing the impugned order dated 31.08.2022 (Annexure P-4), passed by the Judicial Magistrate Ist Class, Bathinda.

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 31.08.2022 (Annexure P-4) reflects that the trial Court proceeded to pass the impugned order on account of absence of petitioner on 31.08.2022 due to reason state above. 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:

“ xxx xxx xxx

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.

xxx xxx xxx ”

Keeping in view the aforementioned circumstance, 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 within 15 days from today 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 within 15 days from today, 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.15,000/- to be deposited with the trial Court in the Punjab State Legal Services Authority.

In case, the petitioner does not appear before the trial Court within the aforesaid period of 15 days from today, 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 and shall inform the SHO about his address at which he intends to reside during the pendency of the 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 and would also furnish his undertaking to the effect that he will not indulge in any illegal activity.

Disposed of in the abovesaid terms.

06.02.2023
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(HARSH BUNGER)
JUDGE

Whether speaking/reasoned : ***Yes/No***

Whether reportable : ***Yes/No***