

CRM-M-6421-2023

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

CRM-M-6421-2023

Date of Decision: 16.02.2023

SIKANDER SINGH @KALA

..... Petitioner

Versus

STATE OF PUNJAB

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Balkaran Singh Aulakh, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, AAG, Punjab.

HARSH BUNGER J. (ORAL)

Petitioner has filed the instant petition under Section 482 Cr.P.C. for quashing of order dated 16.11.2022, whereby, the bail order of the petitioner has been cancelled and his bail bonds and surety bonds were cancelled/forfeited to the State by the Court of learned Sessions Judge, Sri Muktsar Sahib, in case FIR No.16 dated 18.01.2020, registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 61 of the Punjab Excise Act, 1914, at Police Station City Malout, District Sri Muktsar Sahib.

Status report dated 16.02.2023 by way of affidavit of Balkar Singh, PPS, Deputy Superintendent of Police, Sub Division Malout, District Sri Muktsar Sahib, on behalf of respondent No.1/State of Punjab is filed by the learned State counsel in Court today and the same is taken on record, subject to all just exceptions.

Learned counsel for the petitioner submits that the petitioner was on bail and continued to attend the trial proceedings regularly. Learned

counsel further submits that due to miscommunication, the petitioner had

noted down the wrong date and thereafter, the petitioner could not appear before the Court on 16.11.2022 and consequently, his bail as well as bail bonds/surety bonds were cancelled and arrest warrant was 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 Court below was neither intentional nor deliberate but for the aforesaid reason. Learned counsel further submits that the petitioner is ready and willing to surrender before the Court below and join proceedings; if he is granted one opportunity to do so. Learned counsel further submits that the petitioner is ready to abide by all the terms and conditions to be imposed by this Court or by the Court below.

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 impugned order dated 16.11.2022 reflects that the same was passed on account of absence of petitioner on 16.11.2022. 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:

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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.

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In the present case also, the bail granted to the petitioner was cancelled and his bail bonds/surety bonds were cancelled/forfeited to the State and arrest warrant was issued against him as he did not appear on the date fixed i.e. 16.11.2022, before the trial Court for which he has given the reason that due to miscommunication, he had noted down the wrong date.

Keeping in view the aforementioned facts, 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 the date of this order by furnishing an undertaking 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 Court. In case, the petitioner surrenders before the trial Court within 15 days from the date of this order, then he be released by the concerned Court upon his furnishing adequate surety/bail bonds to its satisfaction subject to payment of cost of Rs. 5,000/- to be deposited with 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 and appear before the concerned police station on first Monday of every month till the pendency of trial.

In case, the petitioner does not appear before the concerned Court within 15 days from this order, then the instant petition shall be deemed to have been dismissed.

The present petition is disposed of in the above-said terms.

All pending application(s), if any, shall stand disposed of.

16.02.2023
Himani

(HARSH BUNGER)
JUDGE

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