

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

**CRM-M-12578-2023
Date of Decision: 22.03.2023**

Amandeep and another

..... Petitioners

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Atul Goyal, Advocate
 for the petitioners.

 Mr. Aditya Kapoor, AAG, Punjab
 for respondent No.1/State.

HARSH BUNGER J. (ORAL)

Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure is for setting aside order dated 03.01.2022 (Annexure P-2), passed by the Court of Additional Sessions Judge, Ludhiana, whereby bail of the petitioners was cancelled, their bail bonds/surety bonds were forfeited to the State and warrants of arrest were also issued against them in FIR No.339 dated 09.12.2018 (Annexure P-1), under Section 379-B read with Section 34 of the Indian Penal Code, registered at Police Station Model Town, District Police Commissionerate Ludhiana.

Learned counsel for the petitioners submits that the petitioners were implicated in the present FIR (Annexure P-1) at the behest of complainant/respondent No.2, namely Keshav Kumar s/o Inderjit, on the

allegations that his mobile phone was snatched by the petitioners. Thereafter, the petitioners were granted the concession of regular bail by the Court of Additional Sessions Judge, Ludhiana vide order dated 04.01.2019. Consequent thereto, the petitioners were regularly appearing on various dates before the trial Court, however, during the period of pandemic of COVID-19, the presence of petitioners was not insisted upon. It is submitted on behalf of the petitioners that the previous counsel representing them in the said Court did not intimate the dates of hearing to the petitioners and resultantly, on 03.01.2022, the petitioners did not appear before the trial Court, whereupon bail of the petitioners was cancelled, their bail bonds/surety bonds were forfeited to the State and warrants of arrest were also ordered to be issued against them by the trial Court on 03.01.2022 (Annexure P-2). It is submitted that the petitioners engaged a new counsel and on 07.07.2022, the new counsel informed them about passing of order dated 03.01.2022 (Annexure P-2). It is further submitted that thereafter the petitioners applied for anticipatory bail, which was declined vide order dated 26.10.2022 passed by the Court of Additional Sessions Judge, Ludhiana. It is stated that with the intervention of respectables/family members of the parties, a compromise dated 19.12.2022 (Annexure P-4) has been effected between the parties and a quashing petition (CRM-M-7115-2023) has also been filed in that regard. Learned counsel submits that there was no intention on the part of petitioners to delay the proceedings and their absence before the trial court was neither intentional nor deliberate but for the aforesaid reason. Learned counsel further submits that the petitioners are ready and willing to surrender before the trial Court and join the proceedings, if they are granted one opportunity to do so.

Learned counsel submits that the petitioners undertake 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.

At this stage, Mr. Parvinder Singh, Advocate appears and files Power of Attorney on behalf of respondent No.2/complainant in Court today, which is taken on record, subject to all just exceptions. He admits the factum of compromise arrived at between the parties.

Learned State counsel opposes prayer of the petitioners raised in the instant petition by stating that they have jumped the bail and have not followed the conditions of bail, thus petitioners are not entitled to any relief.

I have heard the arguments of learned counsel for the parties and have also perused the paper book as well as the impugned order dated 03.01.2022 (Annexure P-2).

A perusal of order dated 03.01.2022 (Annexure P-2) reflects that the trial Court proceeded to pass the impugned order on account of absence of petitioners on 03.01.2022. 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:

“- 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 -"

In the present case also, the bail of the petitioners was cancelled and their bail bonds/surety bonds were forfeited to the State as they did not appear on the date fixed i.e. 03.01.2022, before the trial Court because of the reason stated above.

Keeping in view the aforementioned facts and circumstances and also considering the submissions of learned counsel for the petitioners that there was no intention on part of the petitioners to remain absent, this Court is inclined to afford one opportunity to petitioners to mend their ways. Moreover, joining of proceedings by the petitioners, would ensure finalization of proceedings.

Considering the above, the present petition is disposed of with a direction to the petitioners to appear before the trial Court on or before 13.04.2023 and upon their appearance, the Court shall release them on bail subject to their furnishing fresh bail bonds/surety bonds to its satisfaction

subject to payment of Rs.10,000/-, as costs, to be deposited by the petitioners, with the concerned District Bar Association. The petitioners shall also give their undertaking by way of affidavits before the trial Court that they will attend the Court proceedings regularly, unless specifically exempted by the Court.

However, the concerned Station House Officer shall be informed about the release of petitioners and the petitioners shall inform the concerned Station House Officer about their respective address(es) at which they intend to reside during the pendency of trial and any change in the address(es) shall be communicated to the concerned Station House Officer, forthwith. The petitioners would also furnish their respective mobile number(s) to the concerned Station House Officer and keep their mobiles' location till the conclusion of trial.

In case, the petitioners do not appear before the trial Court on or before the date fixed, i.e. 13.04.2023, then the instant petition shall be deemed to have been dismissed.

Present petition is disposed of in the aforesaid terms.

22.03.2023*Apurva***(HARSH BUNGER)
JUDGE**

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