

282

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

CRM-M-13991-2023(O&M)

Date of Decision: 28.03.2023

SURESH KUMAR

....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sushil Bhardwaj, Advocate
for the petitioner.

Mr. Ram Kumar Singla, DAG, Haryana.

HARSH BUNGER, J. (Oral)

Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure, is for quashing of order dated 05.08.2022 (Annexure P-3) passed by learned Additional Sessions Judge, Karnal, whereby, the bail order of the petitioner has been cancelled and his bail/surety bonds were forfeited to the State in ***CRA No.25 of 2018*** arising from Criminal Complaint No.1749 dated 11.07.2016 titled as ***Arjun Sharma vs Suresh Kumar***.

Succinctly, petitioner was convicted under Section 138 of Negotiable Instruments Act and was ordered to undergo rigorous imprisonment for a period of one year and also to pay compensation of Rs.50,000/- to the complainant, vide judgment of conviction dated 12.12.2017 and order of sentence dated 13.12.2017 (Annexure P-1).

Being aggrieved against the said judgment of conviction and

order of sentence, the petitioner preferred an appeal (CRA/25/2018), wherein the sentence imposed upon petitioner was suspended by Lower Appellate Court vide order dated 12.01.2018.

Learned counsel for the petitioner contends that after suspension of sentence of the petitioner, he was regularly appearing before the Lower Appellate Court, however on 05.08.2022, he could not appear before the Court below as his car got stuck in heavy rain whereupon his counsel moved an application seeking exemption from personal appearance, however the same was not allowed by Lower Appellate Court and consequently his bail was cancelled and his bail bonds/surety bonds were also cancelled and forfeited to the State and non-bailable warrants were also ordered to be issued against him by the Lower Appellate Court. 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 Lower Appellate 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 court below and to abide by all the terms and conditions to be imposed by this Court or by the Lower Appellate 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.

A perusal of order dated 05.08.2022 (Annexure P-3) reflects that the Lower Appellate Court proceeded to pass the impugned order on account of absence of petitioner on 05.08.2022 (Annexure P-3). 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**”, 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 `25000/- to be deposited with the trial Court.

- x - x -”

In the present case also, the bail of the petitioner was cancelled and his bail bonds/surety bonds were forfeited to the State and non-bailable warrants have been ordered to be issued against him as he did not appear on the date fixed i.e. 05.08.2022, before the Lower Appellate Court for which he has given the reason that his car stuck in heavy rain.

Keeping in view the above-mentioned facts and circumstances and 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.

In view of the above, the present petition is disposed of with a direction to the petitioner to surrender before the Lower Appellate Court within three weeks from today by furnishing an undertaking before the Court below that he would 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 Lower Appellate Court. In case, the petitioner surrenders before the Court below then he be released upon his furnishing fresh surety bonds/bail bonds to its satisfaction subject to payment of cost of Rs. 10,000/- 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.

28.03.2023

Amandeep

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No