

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17595-2023
Date of Decision: April 13, 2023

NIRMAL KAUR Petitioner

Versus

STATE OF HARYANA Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. D.S. Virk, Advocate for the petitioner.
Mr. Sumit Jain, Addl. A.G., Haryana.

HARKESH MANUJA, J. (ORAL)

At the outset, learned counsel for petitioner submits that on his oral request, the present petition be treated as being filed under Section 438 Cr.P.C. read with 482 of CrPC, laying challenge to the order dated 27.03.2023 whereby non-bailable warrants were issued against the petitioner.

Learned counsel for petitioner submits that in the present case the petitioner was implicated as accused in FIR No.396 dated 20.09.2021 registered under Section 21 of NDPS Act, P.S. Rania, District Sirsa whereby she was granted concession of regular bail by Addl. Sessions Judge vide order dated 12.11.2021 and has been thereafter appearing regularly before trial Court but for 27.03.2023, when on account of she being down with viral fever could not submit herself to the jurisdiction of trial Court, though, an application seeking exemption from appearance was moved, however, the same was declined, resulting into passing of the order dated 27.03.2023 whereby

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the bail bonds of petitioner were cancelled followed by forfeiture of surety bonds and issuance of non-bailable warrants against her. Learned counsel further submits that the non-appearance of the petitioner before the trial Court was wholly unintentional and for the reasons beyond her control, she being unwell. Learned counsel further submits that petitioner shall continue to appear before trial Court on all future hearings unless granted exemption specifically.

On the other hand, learned State counsel has vehemently opposed the prayer made in the present petition while referring to the impugned order wherein it has been noticed that the petitioner is in a habit of seeking exemption from appearance, though, no substantial opposition has been laid to the treating of the present petition as under Section 482 CrPC.

I have heard learned counsel for the parties and have gone through the paper-book. I find substance in the submissions made on behalf of petitioner. In view of the facts and circumstances of the present case, the oral request made by the learned counsel for petitioner is accepted, the present petition is ordered to be treated as having been filed under Section 438 CrPC read with Section 482 CrPC.

A perusal of record shows that the petitioner has been facing trial for the past more than two years and has been consistently putting in appearance before the Court below but for 27.03.2023. A perusal of the impugned order shows that even on the said date an application for seeking personal exemption was moved, mentioning the

fact that the petitioner was unwell and was down with viral fever,

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although, the trial Court noticed the said fact, however, declined to accept the same for the reason that the petitioner was repeatedly claiming exemption from appearance. In the facts and circumstances of the present case, the petitioner being a lady, suffering from viral, the Court below was required to appreciate the reason mentioned in the application about non-appearance for the date fixed with some compassion.

Considering the aforesaid, impugned order dated 27.03.2023 passed by Addl. Sessions Judge/Fast Track Special Court is set aside with direction to the petitioner to surrender before the trial court on the date fixed i.e. 21.04.2023 and furnish her fresh bail bonds/surety bonds to satisfaction of trial Court, along with an undertaking in the shape of an affidavit that she shall continue to appear before Court below during the trial, unless granted exemption specifically. In the meanwhile, learned counsel for the petitioner undertakes to file an amended petition, incorporating Section 482 CrPC besides a specific prayer, challenging the order dated 27.03.2023 passed by the trial court, within a period of two weeks from today.

The aforesaid order shall however be subject to payment of Costs of Rs.5,000/- to be deposited with the Punjab and Haryana High Court Association Lawyer's Family Welfare Fund having account No. 41564846387 with State Bank of India, High Court Branch, Chandigarh, within a period of two weeks from today.

13.04.2023
tejwinder

(**HARKESH MANUJA**)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>