

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

116

CRM-M-26277-2023 (O&M)

Date of decision: 26.05.2023

Pardeep Kumar

....Petitioner

Versus

Balwinder Singh and Anr

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. S.K. Choudhary, Advocate for the petitioner

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 CrPC with a prayer to quash the order dated 24.01.2023 (Annexure P-3) vide which the petitioner has been declared as proclaimed offender in Complaint Case bearing CIS No.NACT/232/2016, filing date 02.06.2016 before the Judicial Magistrate First Class, Gurdaspur under Section 138 of Negotiable Instrument Act titled as Balwinder Singh vs. Pardeep Kumar.

2. Learned counsel contends that the petitioner was granted regular bail and appearing before the trial Court. Initially, due to the pandemic, the case was adjourned, though the petitioner continued to be in touch with his counsel, however, somehow he was unable to keep the track of the proceedings, as he remained occupied with the serious ailment of his wife. Reference is made to the medical record, Annexure P-2. The petitioner being the only one in the family to take care of his wife, fell into depression also. On account of not able to attend the proceedings, he was declared a proclaimed offender vide order dated 23.01.2023 (Annexure P-3). He is a Government teacher and now his salary has also been

attached, which is the only source of income and he has to incur huge expenses on account of the medical condition of his wife. The whole family is only on the verge of starvation. At one point of time, the petitioner had also offered to pay an amount of Rs.1 lac to the complainant, however, the settlement could not be arrived at. He filed anticipatory bail application before the learned Sessions Court, Gurdaspur, which came to be dismissed, being not maintainable on 10.04.2023 (Annexure P-5). Thereafter, he filed a petition under Section 438 Cr.P.C. before this Court, which was withdrawn vide order dated 04.05.2023, Annexure P-6, with liberty to file afresh with better particulars. The absence of the petitioner is neither wilful nor deliberate and is on account of the reason aforesaid. He is ready and willing to join the proceedings and it is prayed that one opportunity may be granted to him to surrender before the learned trial Court, which may even be subject to costs. In support of his arguments learned counsel relies upon the orders of this Court in CRM-M-38277-2022 dated 26.08.2022, in the case of **Surjit Singh vs. State of Punjab**, CRM-M-39000-2022, titled as **Raghav vs. State of Punjab**, decided on 09.09.2022 and CRM-M-36490-2022, **Major Singh vs. State of Punjab**, decided on 15.9.2022.

3. Notice of motion.

4. Mr. Manipal Singh Atwal, DAG Punjab, who has appeared on receipt of advance copy of the petition, opposes the petition by submitting that the impugned order is legal and valid and has been rightly passed by the learned trial Court on account of non-appearance of the petitioner.

5. Since no order that may prejudice the interest of the private respondent-complainant is proposed to be passed, therefore, there is no necessity of issuing notice to him to seek his response at this stage.

6. Heard.

7. The very purpose of issuance of non-bailable warrants, is to compel and secure the presence of the accused to face trial and establish the rule of law, as also to ensure finalization of the proceedings.

8. Adverting to the facts of the present case, the explanation offered due to which the petitioner could not attend the date of hearing leading to being declared proclaimed offender is justified. At times, the accused can be prevented by sufficient reasons to put an appearance before the Court on a given date and every such absence cannot necessarily be construed as deliberate and wilful. However, it is incumbent upon him to join the proceedings, before the trial Court, for the culmination of the same. Considering the fact that the absence of the petitioner being not wilful or deliberate and his readiness and willingness to surrender and join the proceedings, in case one opportunity is granted to him, no prejudice shall be caused to any of the parties, rather his joining the proceedings would help expediting the trial. Thus, in order to make the ends of justice meet and finding judgments referred to above being applicable to the instant case, the present petition deserves to be allowed.

9. In view of the afore-referred orders and the facts and circumstances of the case, the impugned order dated 24.01.2023, Annexure P-3 is set aside subject to the petitioner surrendering before the trial Court on or before 07.06.2023 and deposit Rs.5,000/- with the trial Court, which shall further be disbursed to the complainant forthwith and furnish his fresh bail/surety bonds. On so doing, the trial Court shall release him on bail subject to its satisfaction. He is also directed to furnish an undertaking by way of an affidavit that he will appear on each and every date of hearing before the trial Court, unless specifically

exempted by the Court. He shall also surrender his passport and will not leave the country without prior permission of the Court and the trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

10. Before parting with this order, it is made abundantly clear that in case the petitioner does not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

(AMAN CHAUDHARY)
JUDGE

May 26, 2023
M.Kamra

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No