

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP-1346-2022 (O&M)
Decided on : 22.03.2023

Kalai Selvy Rasiah @ S. Shaminee Selvy ...Petitioner

Versus

Divya Sharma ...Respondent

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- None for the petitioner.

Mr. Ayush Sarna, Assistant Advocate General, Punjab.

The respondent in person.

ARVIND SINGH SANGWAN, J. (Oral)

There is no representation on behalf of the petitioner. Even on the last two dates, no one appeared for the petitioner.

The petitioner is alleging violation of the order dated 16.05.2022, passed by this Court in CRM-M-20409-2022, filed by the petitioner against the State of Punjab and others, vide which, the following directions were issued:-

“10. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case, and also for the reasons mentioned above, the ends of justice would meet with the following order.

11. The petitioner shall surrender before the concerned court on or before 04.07.2022. On appearance, the concerned court shall release the petitioner on bail on the same day, subject

to furnishing bail bonds to its satisfaction and imposing additional conditions, as it may deem appropriate in the background of the accused's conduct.

12. The petitioner to execute a bond for attendance in the concerned court. On the reverse page of personal bonds, the petitioner shall mention the permanent address, along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

13. There shall be a stay of the petitioner's arrest in the case mentioned above till 04.07.2022; however, if the petitioner fails to appear within the time stipulated above, then stay on arrest shall stand vacated without any further reference to this court. It is clarified that if the petitioner appears before the concerned court, then all warrants issued by the concerned court against the petitioner, in the matter mentioned above shall stand recalled and canceled. It is clarified that if the petitioner fails to appear before the concerned court within above mentioned time limit, then this order shall stand recalled automatically under section 362 read with 482 CrPC, without any furtherance reference to this court.

14. On or before 04.07.2022, the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned before. The petitioner shall

always keep the phone location/GPS on the “ON” mode. Whenever the Investigating officer asks to share the location, the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, calls nor format the phone without permission of the concerned SHO/I.O. This condition shall continue till the completion of the trial or closure of case, whatever is earlier.

15. On or before 04.07.2022, the petitioner shall deposit a sum of rupees ten thousand in ‘High Court Lawyers Welfare Fund,’ Account number 65018692589, SBI, IFCI code SBIN0050306, Branch Code 50306, Branch Address State Bank of India, High Court Branch, Sector 1, Chandigarh. After depositing, the petitioner shall file the proof of deposit, before the concerned court and send its copy alongwith a copy of this order to the Secretary, Punjab & Haryana High Court Bar Association, either in physical or electronic mode.

16. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

17. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.”

It is stated in this petition that in compliance with the aforesaid order, the petitioner appeared before the respondent on 04.07.2022 and applied for restoration of the bail bonds, as per orders Annexures P-1 to P-6.

It is further stated that the petitioner appeared at 03:00 P.M. on that day,

however, the Court (presided over by the respondent) allowed the bail application with a direction to submit the bail bonds to the tune of Rs. 5 Lakh along with two sureties of the like amount. The petitioner alleges that the said order amounts to violation of the order passed by this Court as the petitioner was taken into custody and was later on released on the next day.

It is worth mentioning that the petitioner has in fact filed five petitions, in which, the similar orders were passed as the petitioner had absented from the court proceedings and her bail/surety bonds were forfeited in the proceedings, pending under Section 138 of the N. I. Act.

The comments of the respondent, who is a Judicial Officer, were called, vide which, it is explained that four complaints titled as “Jasbir Kaur vs. Kalai Selvy @ S. Shaminee Selvy”, bearing Nos. 4800/2014, 4801/2014, 4798/2014 and 4799/2014 are pending in the Court and were clubbed in a bunch of two complaints. The petitioner-accused absented from court proceedings and her bail/surety bonds were cancelled and forfeited to State. Thereafter, the petitioner filed four petitions before this Court, i.e. CRM-M-20409-2022, CRM-M-20473-2022, CRM-M-20477-2022 and CRM-M-20480-2022. It is further stated that except the petition bearing CRM-M-20409-2022, in other three petitions, this Court has ordered for restoration of the bail bonds upon petitioner surrendering in Court on or before 04.07.2022 and in compliance thereof, the bail bonds furnished by the petitioner were restored in three complaints, however, in complaint No. 4798/2014, she was directed to be released on bail for the first time on furnishing personal bonds to the tune of Rs. 05 Lakh with one surety in the like amount.

The respondent, in her comments, has further stated that in paragraph No. 11 of the order dated 16.05.2022, passed by this Court, it was observed that the petitioner shall surrender before the Court concerned on or before 04.07.2022 and the Court will release the petitioner on bail on the same day, subject to furnishing bail bonds to its satisfaction and imposing additional conditions, as it may deem appropriate in the background of the conduct of the accused. It is further stated that the condition of furnishing bail bonds to the tune of Rs. 5 Lakh with two sureties of the like amount was ordered by the Court considering the fact that the petitioner has absented on an earlier occasion and in order to secure her presence in future, the said condition was imposed.

I have heard learned State counsel as well as the respondent, who is present in Court, and have also gone through record.

The respondent has submitted that on 04.07.2016, the petitioner was declared a proclaimed person in the present complaint No. 4798/2014 and thereafter, she was re-arrested on 13.09.2016 and on 17.09.2016, she was again granted bail on furnishing bail bonds to the tune of Rs. 4 Lakh with one surety in the like amount. Thereafter, the complaint was tagged with another complaint and again on 23.12.2016, the petitioner-accused absented and her bail/surety bonds were cancelled and forfeited to State. Again, on 03.02.2017, the petitioner surrendered in view of the directions of the Sessions Judge, however, she left the Court without permission and did not return, due to which, later on, non-bailable warrants were issued against her and on 09.05.2017, the petitioner-accused was declared a proclaimed person.

The respondent has further submitted that on 12.02.2018, the petitioner was arrested and was granted bail by this Court on 30.08.2018 on deposit of Rs. 1 crore by her relatives and on furnishing adequate personal bonds. Thereafter, the petitioner-accused filed SLP (Crl.) No. 8165-8168/2018 and Hon'ble Supreme Court, vide order dated 28.09.2018, directed that an amount of Rs. 50 Lakh be deposited for grant of bail and on 26.10.2018, she was released on bail. Thereafter, the case was fixed for prosecution evidence, however, the petitioner again absented on 17.11.2021 and non-bailable warrants were issued, when the petitioner filed CRM-M-20409-2022, in which, on 16.05.2022, the aforesaid order was passed staying the arrest of the petitioner till 04.07.2022. The petitioner surrendered on 04.07.2022 and was directed to furnish personal bond to the tune of Rs. 5 Lakh with two sureties in the like amount and having failed to do so, she was sent into judicial custody.

The respondent has further submitted that the petitioner again filed CRM-M-29423-2022 and on 12.07.2022, she admitted to bail on furnishing FDR of Rs. 10,000/- and she was released from the custody. It is further submitted that since the petitioner again absented on 18.07.2022 and 15.09.2022, bailable warrants were issued against her and finally on 19.11.2022, the bail/surety bonds were again cancelled and forfeited to State as learned counsel for the petitioner pleaded no instructions.

The respondent has further submitted that now the case is fixed for procuring the presence of the petitioner through non-bailable warrants. It is further submitted that a number of similar cases, regarding dishonouring

of cheques, are pending against the petitioner, in which, she has absented from court proceedings.

The respondent has given an explanation that since a discretion was given by this Court in paragraph No. 11 of the order dated 16.05.2022 that considering the conduct of the accused, any condition may be imposed, therefore, the petitioner was directed to furnish the personal bond to the tune of Rs. 5 Lakh with two sureties in the like amount, as the petitioner is habitual of jumping the bail, as noticed above.

The respondent has further explained that though the arrest of the petitioner was stayed on 16.05.2022 till 04.07.2022, however, the petitioner opted to appear before the Court on the last date i.e. 04.07.2022 and had the petitioner appeared prior in time, even in case of non-furnishing of personal bond and sureties, she could have been granted some more time, considering the fact that her arrest was stayed till 04.07.2022, therefore, there was no other option left with the Court but to send her into judicial custody.

The respondent has further submitted that all these facts were noticed in the order dated 04.07.2022 and even in the subsequent orders dated 12.07.2022, the same Bench, which granted the bail on 16.05.2022, noticed all the facts and directed the petitioner to be released on bail on furnishing personal bond to the tune of Rs. 10,000/- with one surety of Rs. 25,000/-, however, it was nowhere observed that the respondent has violated the order dated 16.05.2022.

It is, thus, submitted by the respondent that she has not violated any direction/order, passed by this Court, and has acted only by taking

judicious decision and looking into the interest of the complainant as well, because the petitioner-accused is habitual of absconding from the court proceedings and jumping the bail.

As noticed above, there is no representation on behalf of the petitioner.

This Court finds that the explanation given by the respondent is self explanatory that the respondent has not willfully or intentionally disobeyed the order dated 16.05.2022, especially in view of the fact that in the subsequent order dated 12.07.2022, while granting bail to the petitioner-accused, the same Bench has nowhere observed that there is any violation of the order dated 16.05.2022.

In view of the above, no case of any willful disobedience is made out.

Accordingly, the present petition is dismissed.

Rule stands discharged.

22.03.2023
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

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