

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

112

CRM-M-43310-2023

Date of decision: 01.09.2023

Sunil Jaiswal

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Punit Malik, Advocate, for the petitioner

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of impugned order dated 05.05.2022, Annexure P-2, passed by learned Judicial Magistrate Ist Class, Gurugram, whereby the bail of the petitioner stands cancelled and his bail and surety bonds were forfeited to the State, as well as order dated 30.08.2022, Annexure P-4, passed by the trial Court, whereby he has been declared proclaimed person in complaint case bearing No.NACT/4524/2015, registered under Sections 138, 141, 142 of NI Act, 1881 and 420 IPC, Annexure P-1.

2. Learned counsel contends that the petitioner had been granted regular bail by the trial Court vide order dated 09.06.2017. Thereafter, he continued to appear regularly before the trial Court but for 05.05.2022, on account of the fact that he had noted the wrong date, which led to the cancellation of his bail and bail bonds and surety bonds being forfeited to the State. Thereafter, he could not appear as he was suffering from partial paralysis of his right side, copies of medical documents are appended as Annexure P-3. Further, due to the outbreak of

Covid-19 pandemic, he again could not put in his appearance and was thereafter guided by his counsel that he will get the notice to appear before the trial Court and due to which reason he did not appear till date. His bail was cancelled and warrants for arrest were issued in another FIR No.34, dated 30.01.2015, registered under Sections 420, 467, 468, 471 IPC at Police Station Sector 56, Gurugram and vide order dated 16.08.2023, Annexure P-5, this Court had subject to him appearing before the trial Court, quashed the impugned orders. The absence of the petitioner is neither wilful nor deliberate and on account of the reason aforesaid. Further that he is ready and willing to join the proceedings for which he prays for grant of one opportunity to surrender before the learned trial Court, even if the same is subject to costs. Reliance is placed on 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, titled as **Major Singh vs. State of Punjab**, decided on 15.09.2022.

3. Notice of motion.

4. Mr. Jagdish Manchanda, Addl. AG, Haryana, who has appeared on receipt of advance copy of the petition, opposes the same by submitting that the impugned orders are legal and valid and have been rightly passed by the trial Court on account of non-appearance of the petitioner.

5. No order prejudicial to the rights of the private respondent is being proposed to be passed by this Court, thus, there is no requirement for the notice to be issued to him.

6. Heard.

7. The very purpose of initiation of proclamation proceedings, 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 reasons for non-appearance of the petitioner that led to the passing of the impugned orders, appear to be justified. At times, the accused can be prevented by sufficient reasons to put an appearance before the Court and such an 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 was not wilful or deliberate and his readiness and willingness to surrender and join the proceedings, in case one opportunity is granted to the petitioner, no prejudice shall be caused to any of the parties, rather his joining the proceedings would help in 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 orders dated 05.05.2022, Annexure P-2 as well as order dated 30.08.2022, Annexure P-4 are set aside, subject to surrender by the petitioner before the trial Court on or before 14.09.2023 subject to costs of Rs.5,000/- to be deposited with the trial Court, which will forthwith be disbursed to the complainant. He is allowed to remain on the same bail/ surety bonds as had been furnished by him at the time for granting regular bail and 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 not leave the country without prior permission of the Court. 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

01.09.2023
Ankur

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No