

270

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

CRM-M-50991-2022

Date of Decision: 08.08.2023

Manoj Kumar

.....Petitioner

Versus

State of Haryana

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Karan Garg, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein is for quashing of order dated 07.10.2022 (Annexure P-8) passed by learned Addl. Sessions Judge, Rohtak in case FIR No. 344 dated 20.11.2018, registered under Sections 21, 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station, PGIMS Rohtak, District Rohtak whereby bail granted to petitioner was cancelled and bail bonds were forfeited to the State and non-bailable warrants were issued against him.

2. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the FIR. He further contends that petitioner was admitted on bail by learned Court below vide order dated 10.11.2021 (Annexure P-3). He further submits that petitioner was facing trial regularly and attending the court proceedings. However, on 07.10.2022, petitioner could not appear due to ill-health and was suffering from loose motions. That apart, he was out of station and could not travel back due to failing health. Learned counsel further submits that under those circumstances, left with no other option, petitioner through his counsel moved an application before learned trial Court for exemption from personal appearance on 07.10.2022. Appended with that application was medical proof (Annexure P-7) which evidently reflected that petitioner was indisposed. Learned

counsel further urges that learned trial Court discarded the application for grant of

exemption from personal appearance, straightaway cancelled his bail bonds and surety bonds and ordered issuance of non-bailable warrants against petitioner.

3. Learned counsel for the petitioner states that absence of petitioner was not deliberate but was due to his ill-health. The default in appearance was due to circumstances beyond control and not at all intentional. He submits that non-appearance was neither willful nor intentional as he was regularly attending the trial. However, learned trial Court erroneously cancelled the bail of the petitioner without thus giving an opportunity of being heard and then issued non-bailable warrants. Resultantly, the impugned order is unsustainable in law.

3.1. Learned counsel further argues that petitioner had no deliberate intention not to appear in the Court, given that he was on bail and alleged recovery was planted one. That too, the premises from where the recovery was alleged to have been effected, could not be said to be in exclusive possession of petitioner inasmuch as other members of family including two of his brothers were also residing in the same premises and as such, petitioner could not be attributed conscious possession of the same. He further contends that petitioner has a good defense as he has been falsely implicated and trial is likely to result in his acquittal.

4. On the other hand, learned State counsel submits that learned trial Court rightly cancelled the bail of the petitioner since he deliberately chose not to appear on the date fixed and violated the terms of bail bonds. He further points out that on that date, remaining two witnesses of prosecution were present and petitioner intentionally tried to delay the case.

5. Arguments heard.

6. While issuing notice of motion, my learned brother Gurvinder Singh Gill, J., as he then was seized of the matter, passed the following order on 03.11.2022:

*“Notice of motion for 23.1.2023.
The petitioner is directed to surrender before the Trial Court within
a period of 1 week from today. Upon appearance of the petitioner,*

the Trial Court shall release him on interim bail subject to his furnishing bail bonds/surety bonds to its satisfaction.

Since it is only 2 PWs, who remain to be examined, the Trial Court is directed to take necessary steps for summoning the said witnesses for the date already fixed before it i.e., 30.11.2022 and to make efforts for recording their statements at the earliest.

If, for any reason, the matter is required to be adjourned on 30.11.2022, short dates shall be fixed.

The petitioner is directed to ensure his presence before the Trial Court on all the dates as may be fixed by the Trial Court and not to move any application seeking exemption or to cause absence.

The Trial Court shall endeavour to dispose of and conclude the trial at the earliest preferably within this year itself.”

7. It shall not be out of place to mention here that meanwhile, learned trial Court vide letter dated 23.12.2022 requested for extension of time for conclusion of trial on the ground that when the case was fixed for defence evidence, if any, and for arguments, petitioner/accused moved an application under Section 311 Cr.P.C, which was dismissed by learned trial Court vide order dated 12.12.2022, against which petitioner had filed CRR-2882-2022, which is pending adjudication before this Court and is now fixed for 16.08.2023.

8. Be that as it may, since petitioner is regularly appearing before learned trial Court and was released on interim bail subject to his furnishing bail bonds and surety bonds to its satisfaction, pursuant to order dated 03.11.2022 *ibid*, in the premise, order dated 03.11.2022 is made absolute. As a natural corollary, the impugned order dated 07.10.2022 (Annexure P-8), whereby bail of petitioner was cancelled and non-bailable warrants were ordered to be issued, has become otiose. No further orders are required to be passed by this Court.

9. Disposed of, accordingly.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

AUGUST 08, 2023
Harish Kumar

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