

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

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CRM-M-49027-2023
Date of decision: 29.09.2023

Kuldeep Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Brijeshwar Singh Bhalla, Advocate for the petitioner.

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 27.02.2023, Annexure P-6, whereby the bail bonds of the petitioner were forfeited and non-bailable warrants were issued in FIR No.4, dated 16.05.2018, registered under Section 420 IPC at Police Station, NRI Moga.

2. Learned counsel contends that the petitioner had been granted regular bail vide order dated 30.11.2018, Annexure P-1 and he went abroad after being granted permission by the Court vide order dated 03.05.2019 for a period of three months, on account of the fact that his wife was suffering from Cancer and was under treatment in Canada. Thereafter, it was extended twice over for period of six months each time vide orders dated 09.09.2019 and 07.03.2020, Annexures P-3 & P-4 respectively. The petitioner was suffering

from Corona was granted time till 05.12.2020 to surrender vide order dated 05.11.2020, Annexure P-5. However, due to Covid-19 pandemic, he was unable to return, reference is made to the zimni orders reproduced in para 5 of the petition, in particular to orders dated 01.07.2021, 06.09.2021, 06.12.2021 and 02.03.2022 whereby time had been granted to him for the aforesaid purpose and last opportunity vide order dated 03.03.2022. He filed another application for seeking personal exemption on severe medical grounds and was granted exemption on 18.07.2022, on having produced the medical certificate, as required by the Court. Again vide order dated 26.08.2022, he was granted exemption from personal appearance as also on 17.10.2022 and 18.01.2023, however, on 27.02.2023, Annexure P-6, the application seeking personal exemption was dismissed and his bail was cancelled, bonds directed to be forfeited to the State but was not declared as proclaimed person, for which, the proceedings are pending for 03.10.2023. Further that the absence of the petitioner was neither wilful nor deliberate and on account of the reasons aforesaid. He is ready and willing to join the proceedings, for which he is seeking one more opportunity to be granted to surrender before the learned trial Court, even if it is subject to costs as he is to travel to India in 15/20 days. To fortify his submissions, learned counsel for the petitioner places reliance on the judgments of this Court in CRM-M-49283-2021 titled **Gurbir Singh Mundi vs. State of Punjab and another**, decided on 16.12.2021, CRM-M-25115- 2022, titled as **Jasbir Kaur vs. State of Punjab and another**, decided on 2.6.2022 and CRM-M-32011-2018 titled as **Jaswant Singh vs. State of Punjab and another**, decided on 6.02.2020,

order dated 24.09.2021 passed in SLP (Crl.) No.7072 of 2021 filed by the above petitioner-Jaswant Singh, judgment dated 20.10.2021 in Criminal Appeal no. 1233 of 2021 (SLP (Crl.) No.7072 of 2021), which was allowed.

3. Notice of motion.

4. Ms. Himani Arora, AAG, Punjab, who has appeared on receipt of advance copy of the petition, opposes the same by submitting that the impugned order is legal and valid and has been rightly passed by the trial Court on account of non-appearance of the petitioner.

5. Heard the learned counsel and perused the file.

6. It is apposite to make a reference to the judgment of this Court in the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Indian Resident residing in Canada and proclamation proceedings had been initiated while she was not in India, as such, the order of proclamation was set aside.

7. Similarly, in the case of **Jaswant Singh** (supra), this Court in the interim order dated 10.9.2018, noticed the submission made by the counsel for the petitioner relying on the photocopy of the passport (Annexure A-1) that the petitioner was not in India at the time of registration of FIR on 29.10.2009, as well as, on the day, when he was declared proclaimed offender vide order dated 28.4.2014 and even on the date of passing of the above order, as he was in Italy, directed him to surrender before the trial Court, upon which interim bail was ordered to be granted to him. This Court vide order dated 6.2.2020 though declined the prayer for quashing of FIR made in the petition, but, with regard to the order declaring him a proclaimed offender, directed him to surrender before the trial Court and file an application for regular bail,

however, till then he was ordered to be not arrested. He however challenged the said order inasmuch as this Court had declined his prayer for quashing of the FIR, wherein Hon'ble The Supreme Court vide an interim order dated 24.09.2021 passed in SLP (Crl.) No.7072 of 2021, ordered not to take coercive steps against him. Subsequently, vide judgment dated 20.10.2021, the Criminal Appeal no. 1233 of 2021(SLP(Crl.) No.7072 of 2021) was allowed and FIR was quashed, in para 8 whereof it was mentioned that, he had surrendered on 27.10.2018, whereafter he was admitted to interim bail.

8. 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.

9. Adverting to the facts of the present case, the reasons for non-appearance of the petitioner that led to the passing of the impugned order, 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 facts and circumstances of the case in light of the judgments referred to above and readiness and willingness of the petitioner to surrender and join the proceedings, which would help in expediting the trial, the present petition deserves to be and is allowed in the interest of justice.

10. Accordingly, the impugned order dated 27.02.2023, Annexure P-6 is set aside subject to surrender by the petitioner before the trial Court on or before 30.10.2023 and depositing Rs.25,000/- with the Chandi Kusht

Ashram, Sector 47-B, Chandigarh. He is allowed to remain on the same bail/surety bonds as had been furnished by him at the time for granting regular bail. 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. The trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case. Till then, no coercive steps be taken against the petitioner.

11. 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

29.09.2023
Ankur

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