

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

119

CRM-M-49987-2023 (O&M)

Date of decision: 04.10.2023

Kewal Krishan Kumar

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Pallavi Babbar, Advocate for the petitioner

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 13.09.2023 vide which the Judicial Magistrate 1st Class, Sirsa, dismissed the application for exemption from personal appearance filed by the petitioner and cancelled his bail bonds and issued non bailable warrants against him.

2. Learned counsel submits that the petitioner, who is 70 years old, was summoned in a complaint filed under Section 138 of Negotiable Instruments Act, vide order dated 22.05.2018 wherein he was granted regular bail on 07.04.2021. He was unable to appear on 13.09.2023, on account of being unwell, as such an application for seeking exemption from personal appearance for the said date was also filed, which came to be disallowed and the bail was cancelled and bail bonds were forfeited to the State vide the impugned order dated 13.09.2023 and non-bailable warrants were issued for 27.09.2023. The petitioner is a chronic case of varicose veins and has also

undergone bariatric surgery resulting in functioning of the stomach on 20% capacity, besides, that he also suffers from seizure and behavioural disorders and hypertension, the copy of medical reports have been appended as Annexures P2 and P3. His absence is neither wilful nor deliberate. Further, that 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 trial Court within a month, even if the same is subject to costs.

3. Mr. Jagdish Manchanda, Addl. AG, Haryana, appears on receipt of advance notice and opposes the prayer made on the ground that the impugned order has been validly passed.

4. In view of the order being proposed to be passed by this Court, there is no requirement for the notice to be issued to respondent No.2.

5. 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.

6. The present petition has been filed on 25.09.2023 and warrants have been issued for 27.09.2023, which reflects the bona fide of the petitioner to join the proceedings.

7. This Court in CRM-M-36490-2022, titled as **Major Singh vs. State of Punjab**, decided on 15.09.2022, while considering the bonafide of the petitioner and finding the reason for his absence justified, set aside the order issuing non-bailable warrants. In CRM-M-38277-2022, **Surjit Singh vs. State of Punjab**, dated 26.08.2022 and CRM-M-39000-2022, titled as **Raghav vs. State of Punjab**, decided on 09.09.2022, the orders whereby

non-bailable warrants were issued on account of his non-appearance, were set aside on the ground that the same was on account of having noted down the wrong date and failure of the counsel in not intimating the same.

8. Adverting to the facts of the present case, the reason for non-appearance of the petitioner that led to the passing of the impugned order, appears 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 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.

9. Accordingly, the impugned order dated 13.09.2023 is set aside subject to surrender by the petitioner before the trial Court on or before 14.11.2023 and depositing Rs.10,000/-, to be paid to respondent No.2. He is allowed to remain on the same bail/ surety bonds as had been furnished by him at the time for granting bail. He shall also 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.

04.10.2023
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(AMAN CHAUDHARY)
JUDGE

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