

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49880 of 2023
Date of Decision:03.10.2023

Jogi Raj
Vs.
State of Punjab

.....Petitioner
.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. J.S. Dadwal, Advocate for the petitioner.

DEEPAK GUPTA, J. (Oral)

Petitioner is facing trial before learned Additional Chief Judicial Magistrate, Ludhiana, in case FIR No.0070 dated 16.02.2020 registered at Police Station Division No.5, Ludhiana under Sections 420 IPC and Section 24 of Immigration Act, besides Section 13(1) of Punjab Prevention of Human Smuggling Act, 2012. He was on bail. His bail has been cancelled by the trial Court vide impugned order dated 10.07.2023 (Annexure P.3), which has been assailed by the petitioner by way of this petition.

Following is the impugned order as passed by the trial Court:-

“Ld. defence counsel has moved application for seeking exemption from personal appearance on behalf of accused Jogi Raj. The application has been opposed by the complainant Bhagwant Singh and Jaswant Singh present in the Court today while asserting that on every date of hearing they come present in the court but their cross examination is not conducted on account of absence of accused Jogi Raj.

Perusal of file reveals that on 12.4.2023, 22.5.2023 and 5.6.2023 accused Jogi Raj had moved an application for seeking exemption from personal appearance which was eventually allowed by this court. On 21.4.2023, 22.5.2023 and 5.6.2023 witnesses Bhagwant Singh was present in the court. On 5.6.2023 witnesses Palwinder Singh and Jaswant Singh was also present in the court but they could not be cross examined on the

request of ld. defence counsel. Even today witnesses Bhagwant Singh and Jaswant Singh are present in the Court. Ld. defence counsel is not ready to conduct cross examination of the witnesses. Thus afore-said facts and circumstances clearly lay out that accused remains repeatedly absent from the court and further proceedings in the court are also hold up on account of absence of accused.

In the exemption application it has been mentioned that accused Jogi Raj is suffering from high fever and therefore, he could not come present. However exemption application is not supported with any medical record. Resultently exemption application moved on behalf of accused Jogi Raj today seems to be another attempt of accused Jogi Raj to delay the proceedings of the case in hand. Taking hind side view of the matter exemption application moved by accused is hereby declined.

Therefore bail order of accused Jogi Raj is canceled and bail bonds canceled and forfeited to the state. Fresh non-bailable warrants of arrest be issued against accused Jogi Raj for 18.8.2023. Notice to surety be also issued.”

Contention of learned counsel for the petitioner is that petitioner was ill on 10.07.2023 and that even an application for exemption was moved but the same was rejected only for the reason that requisite medical certificate has not been produced.

Learned counsel for the petitioner has placed on record copy of medical certificate Annexure P.2 to contend that petitioner was sick since 09.07.2023.

Notice of motion.

Mr. P.S. Pandher, AAG, Punjab, accepts notice on behalf of the respondent- State.

As rightly pointed by learned State Counsel, that trial Court had to cancel the bail of the petitioner in compelled circumstances.

As is apparent from the impugned order that prior to 10.07.2023, petitioner was moving application after application for

seeking his exemption, which had been allowed on 12.04.2023, 22.05.2023 and 05.06.2023. On all these dates, witnesses of the prosecution were present but the defence counsel was not ready even to cross-examine the witnesses. Even on 10.07.2023, two witnesses were present and defence counsel refused to conduct the cross-examination in the absence of petitioner- accused – Jogi Raj.

The afore-said circumstances make it to appear that intention of the petitioner was to delay the proceedings.

Be that as it may, the request of learned counsel for the petitioner is accepted to permit the petitioner to surrender before the trial Court subject to costs.

Next date of hearing is stated to be 31.10.2023 before learned trial Court.

It is directed that petitioner shall surrender before the trial Court on or before 31.10.2023. On his such surrender, he shall be admitted to bail to the satisfaction of the trial Court. However, this order is subject to the following conditions:-

- (i) petitioner has to pay costs of ₹20,000/-, which is to be paid to witnesses Bhagwant Singh and Jaswant Singh in equal shares i.e. ₹10,000/- each by way of demand draft;
- (ii) petitioner shall not seek exemption of appearance in future except for the cogent reasons based upon material on record; and
- (iii) in case exemption of appearance of the petitioner is allowed on any date and the witnesses are present, the petitioner will

not dispute the identity and will have no objection to the examination of the witnesses. If his defence counsel refuses to conduct the cross-examination, the trial Court will be at liberty to proceed further by resorting to provisions under Section 309 Cr.P.C.

In case of non-compliance of any of the conditions, the present petition shall deemed to have been dismissed.

Disposed of.

October 03, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No