

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

**CRM-M-54280-2022 (O&M)
Date of Decision: 24.01.2023**

VIJAY KUMAR ALIAS CHITTA

..... Petitioner

Versus

STATE OF PUNJAB

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. K.S. Brar, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, AAG, Punjab.

HARSH BUNGER J. (ORAL)

CRM-48067-2022

The present application is filed for placing on record the copy of order dated 22.11.2017 passed by Additional Sessions Judge, Bhatinda as Annexure P-7.

For the reasons mentioned in the application, the same is allowed and the copy of order dated 22.11.2017 passed by Additional Sessions Judge, Bhatinda (Annexure P-7) is taken on record, subject to all just exceptions.

CRM-M-54280-2022

Petitioner has filed the instant petition under Section 482 Cr.P.C. seeking setting aside of impugned order dated 19.10.2021 (Annexure P-5) passed by learned Additional District and Sessions Judge, Bhatinda in CRA No. 654 of 2017, whereby the bail granted to the petitioner has been

cancelled, his bail bonds/surety bonds were forfeited to the State and he has been summoned through non-bailable warrants.

Learned counsel for the petitioner submits that the petitioner was convicted in case FIR No.442 dated 07.12.2014 (Annexure P-1), under Sections 324, 427 and 452 IPC, registered at Police Station Kotwali, Bathinda, District Bathinda, vide judgment dated 06.11.2017, passed by the Court of Chief Judicial Magistrate, Bathinda. It is submitted that the petitioner filed an appeal (CRA No. 654 of 2017) against the aforesaid judgment of conviction dated 06.11.2017 (Annexure P-2), wherein the sentence of petitioner was suspended and he was granted bail. Learned counsel for the petitioner submits that due to pandemic situation of Covid-19, the personal appearance of the parties before the learned Courts below was exempted and thereafter, the petitioner was not aware when the appearance of the parties was started before the learned Court below and on 19.10.2021, petitioner could not appear before the Court as he was not informed by his counsel and consequently, bail of the petitioner was cancelled, his bail bonds/surety bonds were forfeited to the State and non-bailable warrants were issued against him. Learned counsel submits that there was no intention on the part of petitioner to delay the proceedings and his absence before the Court below was neither intentional nor deliberate but for the aforesaid reason. Learned counsel further submits that the petitioner is ready and willing to surrender before the Court below and join proceedings; if he is granted one opportunity to do so. Learned counsel further submits that the petitioner is ready to abide by all the terms and conditions to be imposed by this Court or by the Court below.

Learned State counsel opposes the prayer of the petitioner raised in the instant petition by stating that he has jumped the bail and has

not followed the conditions of bail, accordingly the petitioner is not entitled to any relief and prays for dismissal of this petition.

I have heard the arguments of learned counsel for the petitioner as well as learned counsel for the respondent/State and have also perused the paper book as well as the impugned order.

A perusal of impugned order dated 19.10.2021 reflects that the same was passed on account of absence of petitioner on 19.10.2021 before the lower Appellate Court. It is observed that at times, the accused or his counsel can be prevented by sufficient reasons to put an appearance before the Court on a given date and every such absence cannot be necessarily construed as a deliberate and willful absence.

This Court vide judgment dated 18.07.2018, passed in **CRM-M-29461-2018**, titled as “**Naveen Rao Vs. Central Bureau of Investigation (CBI) ACB, Chandigarh**”, while considering somewhat similar issue, observed as under:

“- x - x -

Keeping in view the conduct of the petitioner as he came back immediately after a period of 20 days, it appears that there was no intention on the part of the petitioner to remain absent. It can be an inadvertent mistake/lapse on his part. Moreover, the petitioner is NRI and ready to abide by all terms and conditions to be imposed by this Court or by the trial Court.

Same issue was there before the Kerala High Court in Mahesh vs. State of Kerala, 2011 (1) Cri.C.C. 834 wherein the condition of bail was violated and due to absence of the accused-petitioner, bail was cancelled. The relevant portion of said judgment is reproduced as under: -

“20. To cancel the bail under section 437(5) or 439(2)

of the Code very cogent and overwhelming reasons are also to be stated. The Court shall not cancel bail in a routine manner, under section 437(5) or 439(2) of the Code, as per law. This is the settled position of law. But, the position under Section 446-A of the Code is totally different. If the Magistrate Court is satisfied that there is breach of condition of bail bond and thereby, forfeiture of the bond, the bond automatically stands cancelled under Section 446-A of the Code.

*21. However, a mere violation of condition in the bail order will not lead to automatic cancellation of bail bond under Section 446-A of the Code. Apart from violation of condition in the bail order, the Court must also be satisfied that the bond is forfeited then alone, bail bond would stand cancelled and the accused can be proceeded against. It is the forfeiture of the bail bond which is crucial under Section 446-A of the Code. If the breach of condition is not wilful and is due to reasons beyond his control, it cannot be said that there is forfeiture of bond. The question is dealt with in **Rajan v. State of Kerala, 2006 (4) KLT 429** and it is held thus:*

"A bond for appearance can be said to be forfeited, only if there is a wilful default on the part of the accused in not appearing before the Court. It is needless to say that an accused can be absent in Court due to various reasons on a particular occasion. When the counsel files an application, it follows that the accused was vigilant and he had taken steps to instruct his counsel to file an application. Such an accused cannot be said to have forfeited the bond by reason of any wilful default. It is only in cases where there is wilful default on the part of the accused to appear in Court, forfeiture of bond

will follow and penalty will incur."

22. In **State of Kerala v. Anil Kumar, 2005 (4) KLT SN 59**, referring to cancellation of bail, this Court held thus: "an innocent violation of any condition imposed by the Court will not ipso facto lead to cancellation of bail under section 439(2) Criminal Procedure Code. The crucial and vital question is whether there has been deliberate, contumacious and unjustified infraction of the conditions imposed by the Court". It is needless to say that if the Court cannot cancel bail, if violation of condition is not wilful or deliberate, it is only reasonable to hold that such violation (which is not wilful or intentional) shall also not lead to an automatic cancellation of bail bond under Section 446-A of the Code."

In the present case also, the bail/surety bonds have been cancelled as the petitioner left India without prior permission of the Court. An application for exemption from personal appearance was also moved, which was dismissed. The petitioner is NRI and he went abroad without seeking any permission from the Court, which has been stated to be inadvertent as he did not go through the terms and conditions of bail but the circumstances were beyond his control. The petitioner immediately came back to India and came to know that his bail bonds have been cancelled. There was no intention on his part to remain absent or to avoid the Court proceedings. The petitioner remained ill when he was abroad, remained there for a period of 20 days and could not come back immediately.

Accordingly, the present petition is allowed and the petitioner is directed to surrender before the trial Court on the next date of hearing i.e., 19.07.2018 by furnishing an undertaking before the trial Court that he will attend the Court proceedings regularly and will not leave the country without prior permission of the Court and abide by all terms and conditions to be imposed by the trial Court. He is

directed to be released by the trial Court by furnishing adequate surety/bail bonds to its satisfaction subject to payment of cost of `25000/- to be deposited with the trial Court.

- X - X -"

Keeping in view the aforementioned facts, this Court is inclined to afford one opportunity to the petitioner to mend his ways. Moreover, joining of proceedings by the petitioner, would ensure finalization of proceedings.

In view of the above, the present petition is disposed of with a direction to the petitioner to surrender before the lower Appellate Court on or before 15.02.2023 by furnishing an undertaking that he will attend the Court proceedings regularly and will not leave the country without prior permission of the Court and abide by all terms and conditions to be imposed by the Court. In case, the petitioner surrenders before the lower Appellate Court on or before 15.02.2023, then he be released by the concerned Court upon his furnishing adequate surety/bail bonds to its satisfaction subject to payment of cost of Rs. 5,000/- to be deposited with the concerned District Legal Services Authority.

In case, the petitioner does not appear before the concerned Court on or before the date fixed i.e. 15.02.2023, then the instant petition shall be deemed to have been dismissed.

At the time of release of the petitioner, Station House Officer, Police Station Kotwali Bhatinda, District Bhatinda shall be informed. The petitioner shall furnish his mobile number to the Station House Officer; keep his mobile's location on.

The present petition is disposed of in the above-said terms.

All pending application(s), if any, shall stand disposed of.

24.01.2023
Himani

(HARSH BUNGER)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No