

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

CRM-M-60862-2022 (O&M)
Date of Decision: 13.01.2023

VIJAY KUMAR AND ANOTHER

....Petitioners

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Naveen Bawa, Advocate
 for the petitioners.

Mr. Vinay Kumar Gupta, AAG, Punjab.

HARSH BUNGER, J. (Oral)

CRM-538-2023

The instant application has been filed under Section 482 Cr.P.C
for placing on record Annexure P-7.

For the reasons mentioned in the application, the same is
allowed. Annexure P-7 is taken on record, subject to all just exceptions.

CRM-M-60862-2022

The instant petition has been filed under Section 482 Cr.P.C for
quashing of the impugned order dated 11.04.2022 (Annexure P-5) in FIR
No.161 dated 11.07.2018 (Annexure P-1) registered under Sections 380 read
with Section 34 of IPC, 1860 at Police Station Daresi, District Ludhiana,
vide which the bail granted to the petitioners has been cancelled and non-
bailable warrants were ordered to be issued against them, as they could not
appear before the trial Court on the date fixed.

Learned counsel for the petitioners submits that petitioner No.1
was granted anticipatory bail by this Court vide order dated 31.01.2019

passed in CRM-M-45988 of 2018, and petitioner No.2 was granted regular bail vide order dated 17.09.2018 passed by learned Judicial Magistrate First Class, Ludhiana. He further submits that after getting the concession of bail, the present petitioners were regularly appearing before the trial Court. However, in the interregnum, due to Covid-19 pandemic, the hearing of the cases were commenced through video-conferencing and the appearance of the petitioners was also exempted. Ultimately, when the Courts started functioning properly, the case was fixed for hearing on 25.02.2022 but the petitioners could not appear before the trial Court and it was adjourned for 11.04.2022. However, on 11.04.2022, due to communication gap between the petitioners and their counsel, they missed the date, resulting in cancellation of their bail and issuance of non-bailable warrants against them by the learned trial Court. Learned counsel submits that there was no intention on the part of petitioners to delay the proceedings and their absence before the trial court was neither intentional nor deliberate but for the aforesaid reason. Learned counsel further submits that the petitioners are ready and willing to surrender before the trial Court and join the proceedings, if they be granted one opportunity to do so. Learned counsel further submits that the petitioners undertakes to appear on each and every date before the trial court and to abide by all the terms and conditions to be imposed by this Court or by the trial Court.

Learned State counsel opposes the prayer of the petitioners raised in the instant petition by stating that they have jumped the bail and have not followed the conditions of bail, accordingly the petitioners are not entitled to any relief and prays for dismissal of this petition.

I have heard the arguments of learned counsel for the petitioners

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 order dated 11.04.2022 (Annexure P-5) reflects that the trial Court proceeded to pass the impugned order on account of absence of petitioners on 11.04.2022. 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 Rs.25000/- to be deposited with the trial Court.

- x - x -"

In the present case also, the bail of the petitioners was cancelled as they did not appear on the date fixed i.e. 11.04.2022, before the trial Court on account of communication gap between them and their counsel appearing before the trial Court.

Keeping in view the fact that the petitioners were regularly appearing before the trial Court except on one date i.e. 11.04.2022 when they absented on account of communication gap between them and their counsel and also considering their submissions that there was no intention on their part to remain absent, this Court is inclined to afford one opportunity to the petitioners to mend their ways. Moreover, joining of proceedings by the petitioners, would ensure finalization of proceedings.

In view of the above, the present petition is disposed of with a direction to the petitioners to surrender before the trial Court on or before 19.01.2023 by furnishing an undertaking before the trial Court that they 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. In case, the petitioners surrenders before the trial Court on or before 19.01.2023, then they be released by the trial Court upon their furnishing adequate surety bonds/bail bonds to its satisfaction subject to payment of cost of Rs. 5,000/- (each) to be deposited in the concerned District Legal Services Authority.

Disposed of in the above-said terms.

13.01.2023
Amandeep

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No