

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

CRM-14979-2024

in/and

CRM-M-12463-2024

Date of Decision: 10.04.2024

SANDEEP ALIAS HAPPY

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Lakshay Bector, Advocate
for the petitioner.

Ms. Manjot Kaur, A.A.G., Punjab.

HARSH BUNGER, J. (ORAL)

CRM-14979-2024

This is an application for preponing the date of hearing in the main case, which is otherwise fixed for 25.07.2024.

For the reasons stated in the application, the same is allowed as prayed for and the main case i.e. ***CRM-M-12463-2024*** is taken up on Board today itself.

CRM-M-12463-2024

Petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, for quashing/setting aside the order dated 11.12.2023 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Ludhiana, vide which the regular bail granted to the petitioner vide order dated 03.12.2019 (Annexure P-2) in case FIR No.196 dated 02.11.2019 (Annexure P-1), registered under Section 379-B(2) of the Indian Penal

Code, 1860, at Police Station Tibba, District Ludhiana, was cancelled; bail/surety bonds were forfeited to the State and non-bailable warrants were ordered to be issued against him.

2. Learned counsel for the petitioner submits that in the abovesaid case FIR No.196 dated 02.11.2019 (Annexure P-1), the petitioner was granted regular bail vide order dated 03.12.2019 (Annexure P-2) and the petitioner was regularly appearing before the trial Court; however, on one date i.e. 11.12.2023, he could not appear before the trial Court as he was admitted in rehabilitation centre from 16.10.2023 to 14.12.2023 to get rid of his addiction of drugs and hence, his bail was cancelled and bail/surety bonds were forfeited to the State and non-bailable warrants of arrest were ordered to be issued against him.

Learned counsel further submits that the non-appearance of the petitioner before the trial Court on 11.12.2023 was neither intentional nor deliberate but for the above said reason. Learned counsel for the petitioner further submitted that the petitioner is ready and willing to surrender before the learned trial Court and undertakes to appear on each and every date; however, he states that in the meantime, he may be protected.

3. Per contra, learned State counsel opposes the request of the petitioner on the ground that he disobeyed the terms of bail order/bonds, which shows his conduct and hence, he does not deserve any leniency.

4. I have heard learned counsel for the parties and have perused the paper book as well as order dated 11.12.2023 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Ludhiana.

5. A perusal of order dated 11.12.2023 (Annexure P-3) reflects that the trial Court proceeded to pass the impugned order on account of absence of the petitioner on 11.12.2023. 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.

6. This Court vide order 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 -”

7. In the present case, the bail of the petitioner was cancelled and his bail bonds/surety bonds were forfeited to the State as he did not appear on the date fixed i.e. 11.12.2023. Petitioner has stated that he could not appear before the trial court on the date fixed as he was admitted in Sai Foundation, De-addiction Drug Counselling & Rehabilitation Centre w.e.f. 16.10.2023 to 14.12.2023 and in support of the aforesaid stand, the

petitioner has placed on record certificate dated 01.01.2024 (Annexure P-4) issued by the abovesaid Centre. The aforesaid stand has not been controverted by the learned state counsel. There is no reason to disbelieve the aforesaid stand of the petitioner. Further, it is noticed that after the bail of the petitioner was cancelled on dated 11.12.2023, he has filed the instant petition within a short period thereafter. The explanation offered by the petitioner for his non-appearance appears to be probable and the same is accepted.

8. In view of the afore-mentioned facts / circumstances and considering that the absence of petitioner before the trial court was not intentional and that the petitioner is ready and willing to surrender and join the proceedings and also to abide by all terms and conditions to be imposed by this Court or by the trial Court, this Court is inclined to afford one last opportunity to the petitioner to mend his ways. Moreover, joining of proceedings by the petitioner, would ensure finalization of proceedings.

9. Considering the above, the present petition is disposed of with a direction to the petitioner to appear before the trial Court on or before 06.05.2024 and upon his appearance, the Court shall release him on bail subject to his furnishing **fresh bail bonds/surety bonds** to its satisfaction subject to payment of cost of Rs.10,000/- to be deposited with the ***“Poor Patients’ Welfare Fund, PGIMER, Chandigarh”*** and the said amount would be spent for the treatment of poor patients within the knowledge of its Medical Superintendent. The petitioner shall also give his undertaking by way of an affidavit before the trial Court that he will attend the Court proceedings regularly, unless specifically exempted by the Court.

10. Further, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned

Station House Officer about his address at which he intend to reside during the pendency of trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his mobile number to the concerned Station House Officer and keep his mobile location 'on' till the conclusion of trial.

11. In case, the petitioner does not appear before the concerned Court below on or before the date fixed i.e. 06.05.2024, then the instant petition shall be deemed to have been dismissed.

12. Disposed of in the above-said terms.

April 10, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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