

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

**CRM-M-19866-2024
Date of Decision: 23.04.2024**

Chanpreet Singh
..... Petitioner

Versus

State of Punjab and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sunny K.Singla, Advocate
 for the petitioner.

HARSH BUNGER J. (ORAL)

1. Petitioner (Chanpreet Singh) has filed the present petition under Section 482 of the Code of Criminal Procedure for setting aside/quashing of order dated 20.02.2024 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Sangrur in complaint bearing No.NACT/821/2019 (Annexure P-1), filed under Section 138 of the Negotiable Instruments Act, vide which petitioner has been declared as a proclaimed person.
2. Learned counsel for the petitioner submits that in the aforesaid complaint (Annexure P-1), the petitioner was granted bail vide order dated 19.09.2023 and thereafter, he was regularly appearing before the trial Court; however on account of oversight and communication gap between petitioner and his counsel appearing before the trial Court; petitioner could not appear before trial Court on 05.12.2023, 21.12.2023 and 10.01.2024. It is submitted

that on 10.01.2024, bail of petitioner was cancelled, his bail bonds were forfeited to the State and proclamation was ordered to be issued against him. It is further submitted that on 20.01.2024, petitioner was declared as a proclaimed person.

3. Learned counsel for the petitioner *inter alia* contends that the procedure prescribed under Section 82 of the Code of Criminal Procedure has not been followed while declaring the petitioner as a proclaimed person, vide order dated 20.02.2024 (Annexure P-3), passed by the learned Judicial Magistrate Ist Class, Sangrur. Learned counsel has referred to Annexure P-4, i.e. the statement of Head Constable Jagtar Singh No.1047/SGR, Police Station City Sangrur, who carried out the proclamation; according to which, although the original proclamation was affixed at the gate of petitioner and one copy was affixed at the public place, i.e. Bus Stand, Malerkotla, however, proclamation was not read out publicly, as envisaged under Section 82 of the Code of Criminal Procedure.

4. Further, it is submitted by learned counsel for the petitioner that the non-appearance of the petitioner before the trial Court was neither intentional nor deliberate but for the above said reason. Learned counsel for the petitioner states 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.

5. Notice of motion.

6. At this stage, Mr. Ankit Grewal, Deputy Advocate General, Punjab, who is present in Court, accepts notice on behalf of the respondent/State. He submits that from the perusal of various zimni orders, as reproduced by petitioner in paragraph No.4 of the petition, it is evident that despite being aware of the pending proceedings, petitioner had failed to

appear before the trial Court on 05.12.2023, and therefore, he was summoned through non-bailable warrants for 21.12.2023. Thereafter again on 21.12.2023, petitioner did not appear, and therefore on 10.01.2024, the bail of petitioner was ordered to be cancelled and bail bonds were forfeited to the State. He further submits that the petitioner has disobeyed the terms of bail order/bonds, which shows his conduct; hence, he does not deserve any leniency.

However, learned State counsel does not dispute the aforesaid factual position that the procedure prescribed under Section 82 of the Code of Criminal Procedure has not been followed inasmuch as that the proclamation was not read out publicly.

7. I have heard learned counsel for the parties and perused the paper book as well as order dated 20.02.2024 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Sangrur.

8. Before considering the submissions made by the respective counsel, it would be appropriate to refer to Section 82 of the Code of Criminal Procedure, which reads as under :-

“82. Proclamation for person absconding.

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court- house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day."

A perusal of above extracted Section 82 of the Code of Criminal Procedure would manifest that proclamation shall be published as follows:-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides."

9. In the instant case, the serving officer made the following

service report :-

“Stated that proclamation of accused Charanjeet Singh was entrusted to me. I affixed original proclamation at main gate of accused and one copy was affixed at Bus stand Malerkotla and the other copy was affixed on the notice board of the Court. Copy of proclamation entrusted to me is Ex. PA and my report dated 18.01.2024 in this regard is Ex.PB.”

A perusal of the above-said report would clearly indicate that the provisions contained in Section 82(2)(i)(a) of the Code of Criminal Procedure have not been complied with inasmuch as that the original proclamation was affixed at the gate of petitioner and one copy was affixed at the public place, i.e. Bus Stand, Malerkotla, however, proclamation was not read out publicly. It is well settled that all provisions of Section 82(2)(i) of the Code of Criminal Procedure are to be mandatorily complied with cumulatively and not alternatively and non-compliance of even one provision would render the proclamation as bad. Thus, the endeavor of the serving officer to serve the proclamation notice upon the accused is deficient and cannot be sustained.

10. Further, a perusal of order dated 10.01.2024 (reproduced at page Nos.13-14 of the paper book) reflects that the trial Court proceeded to pass the impugned order on account of absence of the petitioner on the date fixed, i.e. 10.01.2024. 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.

11. 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) Crl.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 -”

12. 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. 10.01.2024. Petitioner has stated that he could not appear before the trial Court on the date fixed due to oversight and on account of communication gap between him and his counsel. Further, it is noticed that after declaration of petitioner as a proclaimed person, on dated 20.02.2024, he applied for anticipatory bail and thereafter 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.

13. In view of the aforementioned 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.

14. Keeping in view the aforesaid facts and circumstances, impugned order dated 20.02.2024 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Sangrur, being unsustainable in the eyes of law, is set aside. Further, the petitioner is directed to appear before the trial Court on or before 16.05.2024 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.

15. 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.

16. In case, the petitioner does not appear before the concerned Court below on or before the date fixed i.e. 16.05.2024, then the instant petition shall be deemed to have been dismissed.

- 17. Present petition is disposed of in the abovesaid terms.
- 18. All pending application(s), if any, shall also stand closed.

23.04.2024
Apurva

(HARSH BUNGER)
JUDGE

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