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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20332-2024 (O&M)
Date of decision: 25.04.2024

Manabeet Sethi

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Pallavi Babbar, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing of order dated 21.02.2023 (Annexure P-4) passed by the learned Judicial Magistrate 1st Class, Gurugram, in a case bearing No.CHI-3332-2021 dated 11.08.2021, arising out of FIR No.0006 dated 28.01.2021 under Sections 406, 498-A, 506, 509 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Women Police Station Gurugram, District Gurugram, vide which, while dismissing the application for grant of exemption from personal appearance of the petitioner, bail of the petitioner was cancelled and bail/surety bonds

were forfeited to the State and non-bailable warrants were issued.

2. The marriage between the petitioner and respondent No.2 was solemnized on 08.05.2019. Due to temperamental differences, the marriage between them could not survive. Thereafter, the petitioner filed a divorce petition under Section 13(1) of the Hindu Marriage Act, 1955 (for short 'HM Act') and in order to harass respondent No.2, parents of the petitioner also filed a separate petition under Section 13(1) of HM Act and vide order dated 21.08.2023 passed by learned Family Court, Baripada, District Mayurbhanj, divorce was granted in favour of the petitioner. As a counter-blast to aforementioned petitions, respondent No.2 got registered the FIR (*supra*) against the petitioner and his family members.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner was on bail in the FIR (*supra*) and was regularly appearing before the learned trial Court, but due to the fact that his father is suffering from cancer, on 21.02.2023, an application seeking exemption from his personal appearance was filed, though counsel for the petitioner was present in the Court and due to his non-appearance, vide order dated 21.02.2023, learned trial Court dismissed the application for grant of exemption from personal appearance of the petitioner and his bail was cancelled and bonds were forfeited to the State and non-bailable warrants along notice to the surety as well as identifier were issued.

4. Learned counsel for the petitioner further submits that non-

appearance of the petitioner was not deliberate and intentional and thus, aggrieved by the said order, he has approached this Court by way of instant petition. It is contended that the impugned order is liable to be set aside on the ground of unintentional non-appearance of the petitioner due to aforementioned facts.

5. Learned counsel for the petitioner has also submitted that the petitioner is resident of District Mayurbhanj, Odisha, whereas trial of the case is pending at District Courts, Gurugram and attending trial on each and every date is causing great inconvenience and hardship to him on account of long travel from District Mayurbhanj, Odisha to District Gurugram, Haryana and it is also affecting his livelihood and prays that personal appearance of the petitioner before the learned trial Court may be exempted. Reliance in this regard is placed upon judgment passed by this Court in **CRM-M-25963-2023** titled as *Suresh Kumar and another Vs. The State of Haryana and another, 2023 (2) Law Herald 1498*.

6. Notice of motion.

7. Ms. Geeta Sharma, DAG, Haryana, who is present in Court, accepts notice for respondent No.1-State and submits that the impugned order has been passed on the sole ground of the absence of the petitioner, however, it is not disputed by her that the petitioner was already on bail and had been appearing before the trial Court.

8. Having heard learned counsel for the parties and after perusing

the record of the case with their able assistance and with the consent of parties, the matter is taken up for final disposal.

9. A perusal of the order dated 21.02.2023 (Annexure P-4) reflects that the trial Court proceeded to pass the extreme order of cancellation of bail. Many a times, the accused can be prevented by sufficient reasons to put an appearance before the Court on a given date and, therefore, it necessarily cannot be construed as a deliberate and willful absence. The explanation offered for non-appearance before learned trial Court is justified and, therefore, the same is accepted.

10. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

11. The sole purpose of issuance of non-bailable warrants is to secure presence of the accused before the trial Court. The petitioner in the present case has himself come forward and has undertaken to appear before the trial Court on each and every date.

12. In view of the aforesaid facts and circumstances, present

petition is allowed. The impugned order dated 21.02.2023 (Annexure P-4) is hereby set aside.

13. The petitioner is directed to appear before the trial Court within a period of four weeks from today and on his doing so, he shall be admitted to bail on the bail/surety bonds already furnished to the satisfaction of the trial Court, along with costs of Rs.10,000/- to be deposited with the District Legal Services Authority, Gurugram, for wasting precious time of the Court.

14. In case any such application seeking exemption from his personal appearance is moved by the petitioner before learned trial Court, same shall be decided in view of the ratio laid down by this Court in ***Suresh Kumar***'s case (*supra*).

[HARPREET SINGH BRAR]
JUDGE

25.04.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No