

*Before Aman Chaudhary, J.*

**RAVI SABHARWAL AND ANOTHER—Petitioner(s)**

*versus*

**STATE OF HARYANA—Respondent(s)**

**CRM-M No. 50106 of 2022**

October 31, 2022

*Code of Criminal Procedure, 1973—S.482—Indian Penal Code, 1860—Ss. 406, 420—Petition challenging impugned order of Additional Chief Judicial Magistrate whereby bail bonds and surety bonds of petitioners were cancelled and warrants of arrest issued on account of non-appearance of counsel on 17.10.2022—submitted that non-appearance was due to date of hearing having been wrongly noted by counsel—Held that purpose of issuance of summons, warrants etc. is to secure presence of accused to face trial—warrants issued on 7.10.2022 for 12.1.2023 whereas present petition has been filed on 21.10.2022 shows bonafides of petitioners to appear and join proceedings before trial court—Considering absence of petitioners not being willful or deliberate and readiness and willingness to surrender and join the proceedings—no prejudice shall be caused to parties in case one opportunity is granted to petitioners—rather joining will help expedite the trial—to make the ends of justice meet—petition allowed.*

*Held*, that the very purpose of issuance of summons, warrants etc. is to secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

(Para 8)

*Further held*, that the order whereby the warrants of arrest against the petitioners have been issued on 7.10.2022 for 12.1.2023, whereas the present petition has been filed on 21.10.2022, which shows the *bona fide* of the petitioners to appear and join the proceedings before the trial Court.

(Para 9)

*Further held*, that Adverting to the facts of the present case inasmuch as it was on account of the fault of the counsel, the petitioners could not appear before the trial Court, leading to the passing of the impugned order, which appears to be justified explanation of absence. However, it is incumbent upon them to join the

proceedings, before the trial Court, for the culmination of the same. Considering the fact that the absence of the petitioners being not willful or deliberate and his readiness and willingness to surrender and join the proceedings, in case one opportunity is granted to the petitioners, no prejudice shall be caused to any of the parties, rather his joining the proceedings would help expediting the trial.

(Para 10)

Vikas Garg, Advocate, *for the petitioner.*

### **AMAN CHAUDHARY, J.**

(1) The present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 7.10.2022, Annexure P-2, passed by learned Additional Chief Judicial Magistrate, Ambala vide which the bail bonds and surety bond of the petitioners were cancelled and warrants of arrest have been issued against him in case FIR No.245 dated 14.6.2018, registered under Sections 406, 420 IPC at Police Station Ambala Cantt. District Ambala.

(2) Learned counsel, *inter alia*, contends that after lodging of FIR against them, they were granted regular bail vide order dated 30.10.2018 by the trial Court, whereafter, they were regularly appearing on each and every date of hearing except on 17.10.2022, as the date was wrongly noted by their counsel as 12.10.2022 instead of 17.10.2022, leading to the issuance of warrants of arrest against the petitioners vide order dated 7.10.2022, Annexure P-2 for 12.01.2023 and their bail was cancelled and surety bonds were forfeited to the State. He further submits that the absence of the petitioners before the trial Court was neither intentional nor deliberate, however, was for the reasons aforesaid. He submits that the petitioners are ready and willing to join the proceedings before the trial Court, for which he prays for grant of only one opportunity, which may even be subject to imposition of costs or any other conditions, which this Court may deem appropriate to impose. In support of his submissions, he relies on **Surjit Singh vs. State of Punjab**, CRM-M-38277-2022, decided on 26.8.2022, **Naveen Rao vs. Central Bureau of Investigation (CBI) ACB, Chandigarh**, CRM-M-29461-2018, decided on 18.7.2018, **Dimple Kumar vs. State of Punjab** 2017(1) RCR (CrI.), 602 and **'Sonu Sharda vs. State of Punjab'** CRM-M-16648-2020 decided on 1.6.2020.

(3) Notice of motion.

(4) At the asking of the Court, Mr. Tanuj Sharma, AAG, Haryana accepts notice on behalf of the respondent-State. He submits that the order passed by the trial Court being well reasoned, the present petition deserves to be dismissed.

(5) Heard the learned counsel for the parties at considerable length.

(6) In re: **Naveen Rao's case** (supra), this Court has held thus:-

“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.”

(7) Further in case of **Dimple Kumar** (supra), this Court held

“2. The petitioner herein was arrested under the said FIR on 11.04.2015. Thereafter, a petition bearing CRM-M No. 15196 of 2015 was filed in this Court in which the petitioner was released on regular bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Ludhiana by an order dated 14.05.2015. Thereafter, the petitioner herein did not put in appearance before the trial Court on the date so fixed i.e. 25.10.2016 and sought exemption on the ground that he is suffering from viral fever. The Court took notice of the fact that the petitioner herein had sought similar exemptions on several occasions and came to the conclusion that the accused is habitual in seeking exemptions and direction was issued to ensure his presence failing which serious view would be taken against him. Since the petitioner did not put in appearance as directed

by an order dated 12/26.09.2016 and preferred an application seeking exemption on the ground that he is suffering from viral fever, the Court came to conclusion that the ground of exemption did not seem to be genuine. Resultantly, the bail bonds of the petitioner herein were cancelled and it was ordered that he be summoned through non-bailable warrants for 15.11.2016.

3. x xx

4. In view of the fact that the petitioner is willing to furnish an undertaking, without expressing any opinion on the merits of the case, the impugned order dated 25.10.2016 is set aside. The petitioner herein is directed to approach the trial Court within a week and move an application to furnish the said undertaking. On doing so, the petitioner be enlarged on bail.”

(8) The very purpose of issuance of summons, warrants etc. is to secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

(9) The order whereby the warrants of arrest against the petitioners have been issued on 7.10.2022 for 12.1.2023, whereas the present petition has been filed on 21.10.2022, which shows the *bona fide* of the petitioners to appear and join the proceedings before the trial Court.

(10) Adverting to the facts of the present case inasmuch as it was on account of the fault of the counsel, the petitioners could not appear before the trial Court, leading to the passing of the impugned order, which appears to be justified explanation of absence. However, it is incumbent upon them to join the proceedings, before the trial Court, for the culmination of the same. Considering the fact that the absence of the petitioners being not willful or deliberate and his readiness and willingness to surrender and join the proceedings, in case one opportunity is granted to the petitioners, no prejudice shall be caused to any of the parties, rather his joining the proceedings would help expediting the trial. Thus, in order to make the ends of justice meet and finding judgments referred to above being applicable to the instant case, the present deserves to be allowed.

(11) As a sequel to above, this petition is hereby allowed. The impugned order dated dated 7.10.2022, Annexure P-2, is set aside, subject to payment of costs of Rs.15,000/- to be deposited with the

Punjab & Haryana High Employees Welfare Association. The petitioners are directed to surrender before the trial Court on or before 10.11.2022 and furnish their fresh bail/ surety bonds. On so doing, the trial Court shall release them on bail by imposing heavy surety to its satisfaction. They are also directed to furnish an undertaking by way of their affidavit that they will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court.

(12) Before parting with this order, it is made abundantly clear that in case the petitioners do not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

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*Divya Gurney*