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

**CRM-M No. 42294 of 2016
Date of decision: 28.11.2016**

Girdhari Lal

...Petitioner

Versus

State of U.T., Chandigarh

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Amandeep Rana, Advocate
for the petitioner.

JAISHREE THAKUR, J.

The instant petition has been filed under Section 482 of the Code of Criminal Procedure for quashing the impugned order dated 05.10.2016 (Annexure P-1) passed by the trial Court in FIR case No. 678 dated 16.12.2013 whereby arrest warrants have been issued against the petitioner.

In brief, the facts of the case are that the petitioner was arrayed as an accused along with others on the statement of SI Om Parkash under Sections 147, 148, 149, 323, 332 and 353 of the IPC. The allegations against the petitioner and other accused are that they pelted stone on each other and when the police party tried to intervene in the matter, they were pelted with stones as well. Pursuant to the filing of the FIR, the petitioner applied for interim bail before the Sessions Court, Chandigarh which was allowed. The petitioner thereafter appeared before the trial Court on 15.09.2016 on which date, the matter came to be adjourned for 05.10.2016. Due to ill health, the petitioner could not appear before the trial Court on the date fixed.

Resultantly, the bail bonds were cancelled by the trial Court and arrest warrants were issued against the petitioner for 28.10.2016. On 28.10.2016, the petitioner was unable to attend the Court on account hospitalization of a member of his family in Government Medical College and Hospital, Sector 32, Chandigarh. The petitioner immediately applied for cancellation of non-bailable warrants but the said application was dismissed by an order dated 17.11.2016. Aggrieved against the dismissal of the application seeking cancellation of non-bailable warrants, the instant petition has been filed.

Mr. Amandeep Rana, counsel for the petitioner argues that the petitioner is ready and willing to appear on each date and issuance of non-bailable warrants against the petitioner is unlawful and illegal. It is argued that before the issuance of non-bailable warrants, the trial Court ought to have issued bailable warrants at the first instance and in case the petitioner did not put in appearance, it is only thereafter that non-bailable warrants ought to have been issued.

Chapter VI of the Code of Criminal Procedure provides the procedure for procuring the presence of an accused or a witness if a person is not appearing before the Court. No doubt the court does have coercive powers to ensure the presence of the accused/person/witness. The Court is required to first issue summons, thereafter a bailable warrant and if a person is not appearing before the Court then to issue non-bailable warrants of arrest. Issuance of warrants of arrest without issuing summons or bailable warrants has been deprecated, while holding that non bailable warrants should be used sparingly and judicially.

In the instant case, the petitioner herein was on bail thereafter did not appear on the next date fixed i.e on the 05.10.2016 on account of an illness. The Magistrate cancelled the bail bonds furnished and issued warrants of arrest at the first instance. The petitioner herein moved an application for cancellation of the order which has been dismissed solely on the ground that once warrants have been issued, the same have to be executed. The petitioner was appearing before the trial court on earlier occasion. Section 70(2) Cr.P.C. reads as follows:

“Every such warrant shall remain in force until it is cancelled by the Court which issued it or until it is executed”

This section was considered in a judgment rendered in *Himanshu @ Hemant vs. State of Maharashtra* bearing *Criminal Anticipatory Bail Application No. 492 of 2014* decided on **30.04.2014** and it came to be held that **the Court who has issued a warrant has power and discretion to cancel the warrant. After issuance of non-bailable warrants, the accused witness has to appear before the Court and he may file the application explaining the reasons for his non-appearance then it is upto the trial Court to consider the application to release him on bail or to take him in prison. Such order cannot be considered as a order passed in non-bailable offence.** Therefore, learned Magistrate was empowered to cancel the non-bailable warrant as issued since the same has not been executed. The petitioner herein had appeared with an application giving cogent reasons as to his non-appearance on the date fixed and the same should have been considered in its true perspective.

Therefore, in the light of the discussion above, the instant

petition is allowed and the impugned order dated 05.10.2016 and the order dated 17.11.2016 are hereby set aside. The petitioner herein is directed to appear before the trial court on the date fixed, on which date he be enlarged on bail on his furnishing fresh bail bonds and surety bonds. In case the petitioner fails to appear before the trial Court on the date so fixed, the trial Court shall pass appropriate orders.

November 28, 2016
Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No