

Gurbaj Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. B.S.Bhalla, Advocate for petitioner.

Mr. Dhruv Dayal, Additional A.G., Punjab.

ARUN MONGA, J. (ORAL)

Petition herein is for quashing of order dated 02.02.2023 (Annexure P-1), whereby learned Additional Sessions Judge, Amritsar has cancelled the interim bail order of the petitioner and bail bonds were forfeited in the proceedings arising out of FIR No.206 dated 19.07.2014, under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Cantonment, Amritsar and arrest warrants were issued against him.

2. Notice of motion.

3. On the asking of Court, Mr. Dhruv Dayal, Additional A.G., Punjab accepts notice and opposes the petition.

4. Succinct facts first, as pleaded in the instant petition.

4.1. Petitioner was arrested on 19.07.2014. He was later granted the concession of pre trial bail vide order dated 23.12.2014, on the ground that FSL report was not received, until the filing of challan. Challan was presented on 12.02.2019 after about 3 years in the trial court and, in the absence of petitioner. After filing of challan, he was never served. However, on 02.02.2023, when the case was called out, petitioner was not present before learned Judge, Special Court,

Amritsar and warrants of arrest were ordered to be issued against the petitioner and interim bail of petitioner was also cancelled. Hence, the instant petition.

5. Learned counsel for petitioner states that absence is not deliberate and is due to sheer inadvertence. His past non-appearance in trial seemed to have weighed with trial court, counsel contends. Notices were though issued several times to the petitioner, but he remained unserved. Challan was presented in the absence of the petitioner. Petitioner came to know about the same when the police officials raided the house of the petitioner to arrest him, contends the learned counsel. Non-appearance of petitioner was thus neither intentional nor willful.

6. On the other hand, learned State counsel submits that learned trial Court rightly cancelled the bail of petitioner since he deliberately chose not to appear on the date fixed and violated the terms of bail bonds.

7. Heard.

8. No doubt, learned trial Court has got discretion to cancel the bail, however, it is well settled that before passing such an order, Court is required to effect service on the accused so as to afford him an opportunity to explain as to why the bail should not be cancelled. Such course has not been adopted by learned Additional Sessions Judge in the instant case. On this ground alone, impugned order to the extent of cancellation of bail deserves to be set aside.

8.1. Moreover, cancellation of bail is a serious matter and can have significant impact on the life of a person. Matters of personal liberty ought not to be taken so lightly and in such mechanical manner as in the case herein.

9. In the premise, impugned order is set aside. Earlier bail order stands revived on bail bond and surety bond already furnished by petitioner before learned trial Court. Petitioner is directed to join proceedings before learned trial Court within three weeks from today and shall continue to appear before learned trial Court without default.

10. Petition is accordingly allowed.
11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

13.07.2023

Vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No