

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 32101/2023

Date of decision: 12.07.2023.

Sarabjit Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vikram Jeet Singh, Advocate for the petitioner
Ms. Kanika Sachdeva, AAG Punjab

Nidhi Gupta, J.

Prayer in this petition under Section 482 of Code of Criminal Procedure, 1973 is for quashing/ setting aside the order dated 9.1.2023 (Annexure P-3) passed by Id. JMIC, Jalandhar whereby bail granted to the petitioner has been cancelled and bail bonds/surety bonds furnished by him have been forfeited.

2. Brief facts of the case are that FIR No.86 dated 6.6.2018 under Section 498-A IPC was registered at PS Bhogpur, District Jalandhar against the petitioner. Petitioner applied for anticipatory bail and he was granted interim protection by the Id. Addl. Sessions Judge, Jalandhar; which was subsequently made absolute vide order dated 4.7.2018 (Annexure P-2).

After completing investigation, challan was presented and petitioner was

released on regular bail on furnishing personal bond with one surety.

Subsequently charges were framed against the petitioner and other co-accused who pleaded not guilty and claimed trial.

3. It is submitted by the Id. counsel for the petitioner that petitioner has been regularly appearing before the Id. Trial Court, and has at no stage misused the concession of bail. It is stated that vide order dated 6.12.2022 (Annexure P-3) on joint request the matter was referred to Mediation Centre and the parties were directed to appear before Mediation Centre on 3.1.2023 and the matter was adjourned to 9.1.2023 for awaiting the report of Mediation Centre. It is stated that petitioner could neither appear before the Mediation Centre nor Trial Court on said dates as his counsel informed him wrong date for mediation i.e. 3.2.2023 instead of 3.1.2023. It is submitted that when the petitioner went to District Court, Jalandhar on 3.2.2023 to appear before the Mediation Centre he was shocked to learn that mediation had already taken place on 3.1.2023 in his absence; and vide impugned order dated 9.1.2023 (Annexure P-4) petitioner's bail had been cancelled and his bail bonds/surety bonds forfeited. It is further submitted that even though this was first default/inadvertent mistake on part of the petitioner, yet, vide impugned order dated 9.1.2023 Id. Trial Court has issued non-bailable warrants against the petitioner which have been reiterated vide subsequent orders dated 13.3.2023 and 22.5.2023(Annexure P-6). It is further submitted that record would evidence that petitioner was regularly appearing before the Id. Trial court and it was not his intention to misuse the concession of bail. It is submitted that non-bailable warrants have been issued at the address where the petitioner was working, however, the petitioner had left that job and therefore, was not aware about the warrants issued against him. It is

submitted that the warrants ought to have been issued at the address where the petitioner was residing and an opportunity ought to have been granted to petitioner to appear before the Trial Court, however, impugned order has been passed without seeking any sort of explanation from the petitioner. In support of his submission, ld. counsel relies upon judgment of this Court in **Major Singh @ Major v State of Punjab, CRM-M NO.25822 of 2023** decide on 22.5.2023 to submit that in similar matter this Court had held as follows: -

“27. Learned trial Court is empowered under Section 439(2) and Section 437(5) of the Code to cancel the bail but such an order can only be passed after issuance of notice to the accused to grant him an opportunity to explain why the bail granted to him, should not be cancelled. The impugned orders (Annexure P-5) vide which the bail of the petitioner was cancelled indicates no such recourse was taken by the learned trial Court. The forfeiture of the bonds can only be done on the ground of breach of condition imposed on the accused while granting ball. The impugned order (Annexure P-5) was passed solely on the ground that the accused has not appeared on 21.12.2022 before the trial Court. The mere absence of the petitioner on one date would not be sufficient to conclude that there is a willful breach of the conditions as provided under Section 446 of the Code.

28. A similar view has been taken by the Himachal Pradesh High Court in **Narata Ram Vs. State of Himachal Pradesh, 1994(2) RCR (Crl.)155** wherein the following has been observed:

"10. The Scheme of Section 446 of the Code of Criminal Procedure envisages two stages, as indicated above. No doubt accused did not appear nor they could be produced by the petitioner and non-bailable warrants had been issued for their appearance on 1st July, 1992, the Court below had also afforded an opportunity to the petitioner to produce the accused on 1st July, 1992. Had this last opportunity to produce the accused been afforded, the portion of the order

dated 25th May, 1992, directing the forfeiture of the amount under the bonds was legal and valid and for the reasons stated above, the Court could be deemed to have satisfied regarding the existence of reasonable grounds for directing the forfeiture of the bond. Here, a composite order was passed. The petitioner could have produced the accused on 1st July, 1992 and had he complied with the order to this effect, the circumstances would not have attracted the issuance of order forfeiting the bonds. Thus, in such circumstances, the Court cannot be deemed to have satisfied itself as to the existence of grounds for directing the issuance of forfeiture of the bonds on 25th May, 1992. In other words, the trial Court committed an illegality by exercising jurisdiction improperly, which had also not been noticed by the appellate Court".

29. In view of the factual position of the law discussed above, this Court is of the considered opinion that for passing any orders in terms of Section 73(1), Section 82(1), Section 446 of the Code, the recording of the satisfaction with regard to evading of the arrest, the willful concealment and breach of the conditions of the bail bond is absolutely necessary. The constitutional protection provided under Article 21 requires that the accused must be granted opportunity in terms of principles of natural justice before any adverse order curtailing a person's liberty is passed. The Courts cannot issue non bailable warrants in a routine manner without following the drill prescribed under the Code. The Court is required to record its satisfaction on the basis of material available on record and atleast assign reasons for concluding that the accused is willfully evading his arrest and the warrants cannot be executed. The non-bailable warrants are only to be issued after exhausting the other methods of securing the presence of the accused. Mere absence of the accused on one date before the trial Court in itself is not sufficient to conclude that he is evading his arrest and cannot be the sole ground for issuance of non bailable warrants. The Courts can most certainly

take into consideration the conduct of the accused if he is impeding the progress of the trial and is on earlier occasion he was declared a proclaimed offender and on account of his continuous absence from the trial, the trial has been considerably protracted. His past behaviour is a relevant for the purpose of recording satisfaction under the relevant provisions of the Code.

30. In view of the above discussion, this Court finds that the learned trial Court has not followed the drill of the procedure provided under Sections 73, 82, 446 of the Code. The Hon'ble Supreme Court in **Anuradha Bhasin Vs. Union of India 2020(3) SCC 637** has laid down the ratio that the procedural safeguards provided under the statute are required of be mandatorily followed and following was observed:

"98. We also direct that all the above procedural safeguards, as elucidated by us, need to be mandatorily followed. In this context, this Court in the Hukam Chand Shyam Lal case (supra), observed as follows:

"18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other amodes (sic) of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature..." (emphasis supplied)."

31. The sole purpose for cancellation of bail bonds or issuance of proclamation is to secure presence of the accused. The petitioner in the present case undertakes to appear before the learned trial Court on each and every date.

32. The learned State counsel is not able to controvert the factual position as well as the settled law on the issue at hand.

CONCLUSION

33. Accordingly, the present petition is allowed and the impugned orders dated 20.12.2022 and 03.04.2023 Annexure P-5 and P-6, respectively, passed by the learned trial Court are set aside and the petitioner is directed to appear before the learned trial Court on or before 03.07.2023 and on his doing so the learned trial Court shall admit him to bail on furnishing of fresh bail bonds alongwith costs of Rs.10,000/- for wasting the valuable time and process of the Court, to be paid to District Legal Services Authority, Amritsar.

34. Disposed of in above terms."

4. It is vehemently submitted by the ld. counsel for the petitioner that petitioner belongs to a respectable family, and it was never his intention to flee from justice and in fact, it was clear intent of the petitioner to resolve the entire matter through mediation so there is no question of intentionally not appearing either before the Mediation Centre or before the Trial Court.

5. In response ld. State counsel submits that there is no error in the orders passed by the Courts below and in fact, petitioner has not appeared before the Trial Court even on subsequent dates. Ld. State counsel is however, unable to show any judgment to the contrary.

6. Ld. counsel for the petitioner submits that petitioner did not appear before the Trial Court on 13.3.2023 and 22.5.2023 only to evade possible arrest.

7. Heard ld. counsel for the parties.

8. I find merit in the submissions advanced on behalf of the petitioner. Admittedly there are no other cases against the petitioner; and

there is nothing on record to suggest that the petition was evading appearance or service that occasioned the issuance of non-bailable warrants at the first instance itself, especially in view of the fact that petitioner was on regular bail and was admittedly, regularly attending the proceedings before the Trial Court.

9. For the reasons stated above, the present petition is allowed, impugned order dated 9.1.2023 (Annexure P-3) passed by Id. JMJC Jalandhar is set aside, and the petitioner is directed to appear before the Id. Trial Court on or before 28.7.2023 and on his doing so the Id. Trial Court shall admit him to bail on furnishing fresh bail bonds/surety bonds to the satisfaction of the concerned Court.

10. Disposed of in the above terms.

12.07.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No