

CRM-M-33305-2023 (O&M)

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2023:PHHC:089484

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

CRM-M-33305-2023 (O&M)

Date of decision: 17.07.2023

Hardeep Singh @ Kala

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Kulwant Singh, Advocate
for the petitioner.

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

ARUN MONGA, J. (ORAL)

This is a petition under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') *inter alia* seeking quashing of order dated 23.09.2022 (Annexure P-4), passed by Ld. Additional Sessions Judge, Ludhiana along with all consequential proceedings thereto, whereby bail order of petitioner has been cancelled and his bail bonds/surety bonds have been forfeited to State and non-bailable warrants of arrest have also been ordered to be issued in FIR No.1 dated 19.01.2020, registered under Sections 307, 323, 148, 149 IPC and Sections 25/27 of Arms Act, at Police Station Sadar Raikot, District Ludhiana.

2. Succinct facts as pleaded in the petition are that FIR was registered against petitioner on the statement of complainant Gurwinder Singh with the allegations that on 18.01.2020, he went to the marriage of

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Sakinder Singh son of Sandeep Singh. His other friends were also attending the marriage there and then applicant Hardeep Singh and Sonu, while dancing quarreled with Harwinder Singh. Gurwinder Singh stopped them and then all of them went to their homes. At 6.30' O Clock, Gurwinder Singh along with petitioner-Hardeep Singh, Sonu, Manjinder Singh and Darsi reached Bus Stand and then one Swift Car bearing No.PB-19-3939, driven by the occupant and having other 3-4 persons came. One of them was petitioner Hardeep Singh, who was having pistol and other persons were having muffled faces. Then the petitioner Hardeep Singh fired pistol shot towards Gurwinder Singh to kill him which just passed above Gurwinder Singh. Meanwhile, one another person holding pistol also fired shot. Other persons were having baseball and hockeys, who attacked complainant Gurwinder Singh. Meanwhile, Sonu came there, who rescued complainant Gurwinder Singh and then aforesaid assailants ran away from the spot and injured was taken to hospital.

2.1. Further compromise was effected between the parties to the present FIR and on the strength of compromise even a quashing petition bearing CRM-M No.38120 of 2020 was filed before this Court. However, vide order dated 21.09.2022, the said petition was disposed of as withdrawn. Regular bail was granted to petitioner by Ld. Additional Sessions Judge, Ludhiana vide order dated 26.05.2021 and since then the petitioner was regularly appearing before Ld. Trial Court on each and every date of hearing. However, in the meanwhile, the petitioner was arrested in another FIR No.93 dated 19.07.2022, registered under Sections 307, 341, 34 IPC

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and Sections 26, 27, 54 of the Arms Act, at Police Station Badhni Kalan, District Moga. Thereafter, in the above FIR, the petitioner was released on regular bail vide order dated 18.10.2022. As the petitioner was in custody in another case, he could not appear before Ld. Trial Court on 23.09.2022 and as such his bail bonds and surety bonds were cancelled and the non-bailable warrants were issued.

2.2. On 02.12.2022, proclamation warrants under Section 82 Cr.P.C. against petitioner were issued for 24.03.2023 as non-bailable warrants issued against the petitioner were not received back and the case was adjourned to 24.03.2023. On 24.03.2023, proclamation warrants under Section 82 Cr.P.C. were issued for 03.07.2023 as the warrants issued to the petitioner were received unexecuted. On 03.07.2023, again proclamation warrants issued against the petitioner were not received back and again fresh proclamation warrants were issued for 15.07.2023.

3. Learned counsel for petitioner contends that petitioner has been falsely implicated in the present case due to party fraction in village and the FIR has been registered due to political vendetta. Further no such occurrence as alleged has been taken place on the said occasion or on any other occasion. He further contends that parents of the petitioner have already expired and he is unmarried and since there is no other family members of the petitioner, the Ld. Court was not informed regarding the arrest of petitioner in another case. Therefore, due to circumstances beyond his control and that due to aforesaid *bonafide* reason that he was arrested in another FIR, he could not appear before Ld. Trial Court on the relevant date.

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He further contends that no prior notice was ever given to the petitioner for cancellation of bail bonds and issuance of non-bailable warrants. Resultantly, the impugned order is unsustainable in law.

4. Notice of motion.

5. Learned State counsel, on advance service, accepts notice on behalf of respondent-State of Punjab. On instructions from ASI Balwinder Singh, the Ld. State counsel accepts the aforementioned facts.

6. Heard.

7. 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 issue notice to 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 Court below in the instant case. In the peculiar premise, in my opinion, the Ld. Court below has committed the patent irregularity by not according an opportunity to accused to explain his default by first issuing notice as to why his bail bonds be not cancelled. On this ground alone, impugned order to the extent of cancellation of bail deserves to be set aside.

8. 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. There being sufficient reasons beyond control of the petitioner which caused his default on the date of hearing, I am of the view that

impugned order cannot be sustained and same 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. However, it is made clear that any observations and/or submissions noted herein above shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant petition against cancellation of bail alone and learned trial Court shall proceed without being influenced with this order.

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

(ARUN MONGA)
JUDGE

July 17, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No