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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34265-2023 (O&M)
Date of decision: 18.07.2023

Ranjit Kaur

....Petitioner

versus

State Bank of India and another

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Saurav Bhatia, Advocate for the petitioner.

Mr. Dhruv Dayal, Addl.A.G., Punjab for respondent No.2.

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 17.05.2023 (Annexure P-6), passed by Ld. Additional Sessions Judge, Shaheed Bhagat Singh Nagar along with all consequential proceedings thereto, whereby bail order of petitioner has been cancelled and her bail bonds/surety bonds have been forfeited to State and non-bailable warrants have also been ordered to be issued in a complaint under Section 138 of the Negotiable Instruments Act, 1881.

2. On a complaint filed by the bank under section 138 against dishonor of two post-dated cheques for Rs. 6,77,233.89/- and Rs.40,206/-, respectively, issued in discharge of loan taken from bank, resulted in awarding of simple imprisonment for one year to the petitioner.

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2.1. Petitioner filed an appeal against the said order and alongwith the said appeal, an application for suspension of sentence was also filed. Vide order dated 09.11.2022, sentence of the petitioner was suspended and she was directed to furnish personal/surety bonds to the satisfaction of the trial Court. However, on 17.05.2023, the petitioner and her counsel could not appear due to wrong noting of date by her counsel and straightaway her bail bonds and surety bonds were cancelled and non-bailable warrants were issued.

3. Learned counsel for petitioner contends that petitioner is a housewife. The default in appearance was due to circumstances beyond control, as aforesaid and not at all intentional. Due to said personal difficulty, the petitioner could not appear on the said date. However, without issuing any prior notice to the petitioner, learned first appellate Court erroneously cancelled the bail of the petitioner without thus giving any opportunity of being heard and then issued non-bailable warrants. Resultantly, the impugned order is unsustainable in law.

4. Learned State counsel, on advance service of petition, appears on behalf of respondent-State of Punjab and opposes the prayer made.

5. Given the nature of order being passed, there is no necessity to serve respondent No.1/complainant, as no serious prejudice would be caused to it. Service on respondent No1 is thus exempted at this stage.

6. Heard.

7. No doubt, learned Court below has got discretion to cancel the bail in case accused fails to appear before the Court in violation of the bail

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bonds furnished. However, it is well settled that before passing such an order, Court is required to issue notice to the accused so as to afford accused 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 patent irregularity by not according an opportunity to accused/petitioner to explain her default by first issuing notice as to why her 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 her default on solitary 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 Court below. Petitioner is directed to join proceedings before learned Appellate Court within three weeks from today and shall continue to appear before learned Court below without default during the pendency of appeal.

10. 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

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alone and learned Appellate Court shall proceed without being influenced with this order.

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

(ARUN MONGA)
JUDGE

July 18, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No