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

**CRM-M-34346 OF 2023 (O & M)
DATE OF DECISION: 28.07.2023**

Vijay Kumar**....Petitioner****Versus****State of Punjab****...Respondent****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. M. S. Hundal, Advocate,
For the petitioner.

Mr. Dhruv Dayal, Addl. AG, Punjab.

ARUN MONGA, J. (ORAL)

CRM-31064-2023

For the reasons stated in application, same is allowed. Documents contained at Annexures P-5 to P-7 are taken on record, subject to all just exceptions.

MAIN CASE

Petitioner has filed instant petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking quashing of impugned order dated 03.10.2022 (Annexure P-4), whereby his bail bonds and surety bonds were cancelled and non-bailable warrants were issued in FIR No.251 dated 11.11.2017, registered under Sections 21, 22 of Narcotic Drugs and Psychotropic Substances Act (for short "NDPS Act") at Police Station Jandiala, Amritsar (Rural), Punjab.

2. Per FIR, 100 tablets of Alprazolam were recovered from petitioner without any permit or license. He was admitted on interim bail till the receipt of report from Forensic Science Laboratory, by learned Court below vide order dated 12.12.2017 (Annexure P-2). Challan was presented on 06.08.2018 and subsequently, vide order dated 29.08.2018 (Annexure P-3), interim bail granted to the petitioner was made absolute by learned trial Court.

3. Learned counsel for that petitioner states petitioner has been appearing before the trial court. Last he appeared on 08.11.2021, when nothing effective happened in

learned trial Court and even prior thereto, due to intervening Covid-19 period, proceedings were simply being adjourned as court were doing only restricted work. Recording of evidence before learned trial Court was being deferred owing to pandemic. Due to some communication gap between the petitioner and his counsel, he remained under the *bona fide* impression that work in Courts had yet not resumed full scale and only urgent cases are being taken up and recording of evidence was still being deferred. He further contends that petitioner misunderstood that as and when his counsel would ask him to appear in Court, he would present himself.

3.2 Learned counsel argues that petitioner had no deliberate intention not to appear in the Court, given that he is on bail and alleged recovery is of non-commercial. That too, was not recovered from his person. He has a good defense as he has been falsely implicated, trial is likely to result in his acquittal.

3.3 Learned counsel further urges that petitioner is a family man, having wife and two minor children to look after. He works at Pingalwada, District Amritsar and being a person of fixed abode, it is unlikely that he would flee from Court proceedings.

4. On advance service of copy of petition, learned State counsel appears and opposes the petition. He submits that learned trial Court rightly cancelled the bail of petitioner since petitioner deliberately chose not to appear on three consecutive dates fixed and violated the terms of bail bonds.

5. I have heard learned counsel for the parties and perused the record.

6. It appears that due to peculiar pandemic circumstances, petitioner did not appear due to communication gap between him and his counsel on three consecutive dates. Petitioner is stated to be a 26-year old married person with family of two minors and his absence before learned Court below seems unintentional.

6.1. 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 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. Learned Court below has ordered non-bailable arrest

warrants against petitioner to secure his presence. Issuing non-bailable warrants of arrest directly involves curtailment of liberty of a person. I am of the view that without recording subjective satisfaction to the effect that accused is evading his arrest, which should be on the basis of materials placed before the Court, warrant of arrest ought not to be issued. Mere absence of accused cannot be a conclusive presumption that accused is evading trial.

7. 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.

8. There being sufficient reasons beyond control of the petitioner which caused his default on a few dates of hearing, I am of the view that impugned order cannot be sustained and same is set aside. Non-bailable warrants issued against the petitioner are also quashed. 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 Court below within three weeks from today and shall continue to appear before learned trial Court without default.

9. Petition is accordingly allowed.

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

11. Pending application(s), if any, shall also stand disposed of.

JULY 28, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No