

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34402-2023 (O&M)

Date of decision: 19.07.2023

Sanjay

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Rahish Pahwa, Advocate for petitioner.

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

ARUN MONGA, J. (ORAL)

Present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 (for short, Cr.P.C.) for grant of anticipatory bail to petitioner in case FIR No. 166 dated 23.05.2018, registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station City Khanna, District Khanna.

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

2.1. Petitioner was arrested on 23.05.2018. He was later granted the concession of interim bail till receipt of FSL report vide order dated 03.10.2018 (Annexure P-3) by a coordinate Bench of this Court, on the ground that FSL report was not received. Petitioner was appearing before learned trial Court on each and every date during trial. On 26.07.2022, petitioner filed an application for exemption from personal appearance on the ground that he has to take his mother for medical check-up to a hospital in Jalandhar but the same was not taken into consideration by learned trial Court. When the case was called out on 26.07.2022, petitioner was not present before learned Judge, Special Court, Ludhiana and warrants of arrest were ordered to be issued against the petitioner and bail of petitioner was also cancelled. Hence, the instant petition.

3. Learned counsel for petitioner contends that 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 trial 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 dated 26.07.2022 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 and 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.

5. Heard.

6. 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 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 his default by first issuing notice as to why his bail bonds be not cancelled. On this ground alone, impugned order dated 26.07.2022 to the extent of cancellation of bail deserves to be set aside.

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 starting from 26.07.2022, I am of the view that impugned order cannot be sustained and same is therefore 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 Court below within three weeks from today and shall continue to appear before learned Court below without default during trial.

9. 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 Court below shall proceed without being influenced with this order.
10. Petition is accordingly disposed of.
11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

19.07.2023
Vandana

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