

CRM-M-36787-2023 (O&M)

124

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36787-2023 (O&M)

Date of decision: July 31, 2023

Pawan Kumar

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Fatehjeet Singh, Advocate for petitioner.

Mr. Dhruv Dayal, Additional AG Punjab.

ARUN MONGA, J. (ORAL)

Quashing is sought herein of an order dated 14.03.2023 (Annexure P-6), whereby bail of the petitioner was cancelled and his bail/ surety bonds were forfeited to the State. Impugned order is passed by learned Additional Sessions Judge, Amritsar in case FIR No.184 dated 14.07.2021, under Sections 21, 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS Act'), registered at Police Station, Beas, District Amritsar (Rural),

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

2.1. Petitioner along with his co-accused were apprehended on 14.07.2021 and 15 grams of heroin was recovered from a transparent bag.

3. Learned counsel for the petitioner contends that petitioner was admitted on bail by learned Court below vide order dated 04.08.2021 (Annexure P-2), after duly considering *inter-alia* that alleged contraband does not fall within the ambit of commercial quantity. He further submits that on 14.03.2023, petitioner could not appear before learned trial Court as he was detained in another case bearing FIR No.32 dated 08.03.2023, in which he was later released on regular bail vide order dated 27.04.2023 (Annexure P-5) passed by learned Special Court, Jalandhar. However, ignoring the same, vide impugned order dated 14.03.2023 (Annexure P-6), bail of petitioner was cancelled and bail/ surety bonds were forfeited to the State. Non-bailable warrants of arrest were issued against the petitioner.

CRM-M-36787-2023 (O&M)

4. On advance service of petition, learned State counsel appears and opposes the petition.

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

6. Concededly, petitioner was earlier granted bail by the learned Court below vide order dated 04.08.2021 (Annexure P-2). Thereafter, on 14.03.2023, petitioner could not appear before the Court below as he was taken in custody in another criminal case. There was thus no way for the petitioner to appear in person unless state would have produced him, he being in its custody. And yet, learned Court below cancelled his bail order and bail/ surety bonds were forfeited to the State. Clearly, petitioner's absence on the date fixed before Court below was unintentional and beyond his control.

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 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 ordered cancellation of bail and issuance of 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, that too on a solitary date, cannot be a conclusive presumption that he is evading trial.

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 for default in personal appearance, I am of the view that impugned order cancelling the bail of petitioner cannot be sustained and same is set aside. Non-bailable warrants issued against the petitioner are also quashed. Earlier bail orders stand revived on bail bond and surety bond already furnished by petitioner before learned Court below. Petitioner is directed to

CRM-M-36787-2023 (O&M)

join proceedings before learned Court below within three weeks from today and shall continue to appear before learned trial Court without default.

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

(ARUN MONGA)
JUDGE

July 31, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No