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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39984-2023(O&M)

Date of decision: August 17, 2023

Jagroop Singh @ Roop and another

....Petitioners

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Amit Arora, Advocate
for the petitioners.

Mr. Dhruv Dayal, Additional AG Punjab.

ARUN MONGA, J. (ORAL)

Petition herein is for quashing of impugned order dated 22.08.2022(Annexure P-2) passed by learned Judicial Magistrate 1stClass, Baba Bakala, District Amritsar whereby non-bailable warrants were issued against the petitioners for non-appearance before the court. Bail was cancelled and bail/ surety bonds of petitioners were directed to be forfeited to the State. Petitioners are accused in FIR No.20 dated 18.02.2018, registered under Sections 379, 411, 420, 473, 482 read with Section 34 of IPC, 1860, at Police Station, Beas, District Amritsar,

2. Learned counsel for the petitioners submits that petitioners were earlier granted bail and they never misused the said concession. However, due to wrong noting of next date of hearing as 12.11.2022 instead of 22.08.2022 petitioners could not appear. Learned trial Court vide impugned order dated 22.08.2022 (Annexure P-2) cancelled the bail and ordered to summon the petitioners through non-bailable warrants.

2.1. Petitioners applied for grant of anticipatory bail before learned Additional Sessions Judge, Amritsar, which was dismissed vide order dated 03.08.2023 (Annexure P-3).

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

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

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5. Concededly, petitioners were earlier granted bail by the learned Court below. Learned counsel contends that absence on the date fixed before Court below was unintentional. Petitioners could not appear before the Court below on the date fixed i.e., 22.08.2022 as they had noted a wrong date inadvertently. It appears to be a case of genuine human error and not a deliberate non-appearance on one particular hearing.

6. 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. Instead at the first instance, learned Court below ordered issuance of non-bailable warrants against petitioners to secure their 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 appearance, which should be on the basis of materials placed before the Court, warrant of arrest cannot be issued. Mere absence of accused cannot be construed as a presumption that they are evading the trial so as to issue warrant of arrest. In the peculiar premise, in my opinion, learned Court below has committed patent irregularity by not according an opportunity to accused/petitioners 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 issuing non-bailable warrants and 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 petitioners which caused their 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 petitioners are also quashed. Earlier bail order stands revived on bail bond and surety bond already furnished by petitioners before learned Court below. Petitioners are directed to join proceedings before learned Court below within three weeks from today and shall continue to appear before learned trial Court without default.

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

(ARUN MONGA)
JUDGE

August 17, 2023
Jyoti Thakur

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No