

CRM-M-39343-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 10.08.2023

Arun Kumar

....Petitioner

V/s

Ramesh Kumar and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Inderjeet Singh, Advocate for the petitioner.

Ms. SvaneelDayal, Additional Advocate General, Haryana.

ARUN MONGA, J. (Oral)

Quashing is sought herein of an order dated 14.07.2023 (Annexure P-2), whereby bail of the petitioner was cancelled and his bail/ surety bonds were forfeited to the State. Impugned order is passed by learned Judicial Magistrate 1st Class, Bilaspur in complaint case No.270 of 2017 (Annexure P-1) filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') titled 'Ramesh Kumar Vs. Arun Kumar'. Further prayer has been made to quash order dated 26.07.2023 (Annexure P-3) whereby application filed by petitioner for grant of anticipatory bail under Section 438 Cr.P.C. was dismissed by learned Sessions Judge, Yamuna Nagar.

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

2.1. Respondent No.1 filed a complaint under Section 138 of NI Act against petitioner owing to dishonor of a cheque for an amount of Rs.3,45,000/-. Petitioner was summoned to face trial in the said complaint. When the case was fixed for defense evidence and arguments, on 14.07.2023, petitioner was present in the Court in the pre-lunch session. However, post lunch, petitioner could not appear and his bail was cancelled and bail/surety bonds were forfeited to the State.

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3. Learned counsel for the petitioner contends that petitioner could not appear in the second half on the date fixed i.e., 14.07.2023 on account of his ill health as he was suffering from high blood pressure. However, ignoring his illness, vide order dated 14.07.2023 (Annexure P-2), bail of petitioner was cancelled and his bonds were forfeited to the State. Petitioner has also appended his medical certificate dated 19.07.2023 (Annexure P-5) with the petition.

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

5. Given the nature of order being passed, service upon respondent No.1 is dispensed with at this stage.

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

7. Concededly, petitioner was on bail granted by the learned Court below. On 14.07.2023, petitioner's absence on the date fixed before Court below was not only unintentional but beyond his control due to his illness, yet his bail was cancelled, even though he was present in the first half of the court hours. Subsequently, petitioner approached the Sessions Court seeking anticipatory bail, which was also dismissed vide another impugned order dated 26.07.2023 (Annexure P-3) on the ground that petitioner was not suffering from any serious ailment which prevented him to appear in Court.

8. 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

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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.

9. 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.

10. There being sufficient reasons beyond control of the petitioner for default in personal appearance, I am of the view that impugned orders cancelling the bail of petitioner cannot be sustained and same are 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 join proceedings before learned Court below within three weeks from today and shall continue to appear before learned trial Court without default.

11. Petition is accordingly allowed.

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

(ARUN MONGA)
JUDGE

August 10, 2023
Ajay

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