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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-47526-2023 (O&M)

Date of decision: 20.09.2023

Mukesh Kumar Yadav @ Guddu

....Petitioner

versus

State of Punjab

....Respondent

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

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

ARUN MONGA, J. (ORAL)

Petition herein is for quashing of order dated 02.08.2023 (Annexure P-3), whereby learned trial Court, has cancelled the bail order of the petitioner and bail bonds were forfeited to the State in the proceedings arising out of FIR No.62 dated 10.07.2014, registered under Section 382, 394, 148 read with Section 149 of IPC, 1860 at Police Station, Division No.8, Ludhiana and arrest warrants were issued against them. Further separate proceedings were initiated and prayer has been made to quash order dated 01.09.2023 (Annexure P-4) passed in separate proceedings vide which fresh non-bailable warrants of petitioner were issued.

2. Notice of motion.

3. On advance service of copy of petition, learned State counsel appears and accepts notice on behalf of the respondent-State of Punjab.

4. Learned counsel for the petitioner submits that petitioner was suffering from ailment of piles and was under regular treatment and due to this, he was admitted in hospital for performing surgery. Relevant medical record is annexed as Annexure P-1. He has to get himself operated for the same and went under constant treatment at hospital.

4.1. Learned counsel for the petitioner further contends that petitioner was released on bail by learned Court below vide order dated 23.02.2017 (Annexure P-2). He further submits that petitioner was facing trial regularly and attending the court proceedings since 2017. Petitioner lastly appeared on 06.07.2023 and matter was adjourned to 02.08.2023.

However, on 02.08.2023, petitioner and his counsel could not appear and straightaway his

bail bonds and surety bonds were cancelled and non-bailable warrants were issued. Hence, the instant petition.

5. Learned counsel for petitioner further states that absence of petitioner was not deliberate. He further submits that petitioner was advised to undergo surgery and same was apprised by petitioner to his counsel. He also requested his counsel to move an application for exemption from personal appearance. Counsel filed exemption application but did not append medical record rather moved an application stating that petitioner is down with fever. Accordingly, exemption application was declined by learned trial Court.

6. Learned counsel for petitioner further canvasses that the default in appearance was due to circumstances beyond control and not at all intentional. Further submits that non-appearance was neither willful nor intentional as he was regularly attending the trial from last six years. However, without issuing any prior notice to the petitioner, learned trial Court erroneously cancelled the bail of the petitioner. and without thus giving an opportunity of being heard and then issued non-bailable warrants. Resultantly, the impugned order is unsustainable in law.

7. On the other hand, learned State counsel 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.

8. Arguments heard

9. No doubt, learned trial Court has got discretion to cancel the bail. However, reference may be had to Apex Court judgment in case titled ***“Inder Mohan Goswami and another v. State of Uttaranchal and others¹”*** wherein it is held as below:

“53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This Could be when:

It is reasonable to believe that the person will not voluntarily appear in court; or

the police authorities are unable to find the person to serve him with a summon; or

it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and

ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issueailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-ailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-ailable warrants."

9.1 In the peculiar premise, in my opinion, learned Court below has committed patent irregularity by not recording reasons as per ratio rendered in judgment above. On this ground alone, impugned order to the extent of cancellation of bail deserves to be set aside.

10. 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.

11. Apart from aforesaid, in this case, medical record Annexure P-1 of Dr. Gupta's Piles & General Hospital, Ludhiana shows that the petitioner was under treatment there for haemorrhoids with ulcers from 19.07.2023 to 12.08.2023; had also been examined by the doctor on 02.08.2023 and prescribed treatment. Impugned order dated 02.08.2023 shows that an application was also moved by the petitioner's counsel seeking his exemption from personal appearance stating that he was suffering from fever. Obviously, while moving the application for exemption from appearance, petitioner's learned counsel did not attach the medical record and also erroneously mentioned 'fever' instead of the actual ailment of 'haemorrhoids with ulcers' as the reason for his inability to attend the court. Otherwise, it seems that the absence of the petitioner was not intentional but was due to illness.

12. There being sufficient reasons beyond control of the petitioner which caused his default on solitary date of hearing, I am of the view that impugned order deserves to be set aside. Ordered accordingly. Earlier bail order stands revived on bail bond and surety bond already furnished by petitioner before learned trial Court. Petitioner is directed to join proceedings before learned trial Court within three weeks from today and shall continue to appear before learned trial Court without default.

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

Yes/No