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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-52611-2023 (O&M)****Date of decision: October 17, 2023**

Sadaam Hussain and others

....Petitioners

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Rajneesh Budhiraja, Advocate for petitioners.

Mr. Dhruv Dayal, Additional AG Punjab.

ARUN MONGA, J. (ORAL)

Petitioners before this Court are aggrieved against an order dated 05.06.2023 vide which, for a solitary non-appearance, learned trial Court has cancelled the bail of the petitioners and bonds were forfeited to the State, and issued their non-bailable warrants, in a case bearing FIR No.215 dated 09.07.2016, registered under Sections 365, 354, 323, 148, 149, 201, 376, 376D of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), at Zirakpur Police Station, in Mohali.

2. Per First Information Report (FIR), on July 03, 2016, complainant, namely, Raveena stated that she was married to Mohammad Asif Ali against the wishes of her family. She alleged that on dated June 22, 2016 at around 2.30 p.m., few people, namely Sheru, Azaad, Amru, Azrudin, Shahid, Wahid, Rafiq, Imran, Sabir, Sadaam, Zubair, Ishak, Nasru, Kayum, Abdulla, and Shera, Hasan, Sadia, Aamil, of her Village Lalar, came outside the Hotel Abhinandan and dragged her and Mohammad Asif Ali from the hotel and took them in 03 cars, which were parked outside the hotel. She could not see the registration plate of cars. Mohammad Asif Ali was taken in another car. Kamil was driving the car in which complainant was made to sit and other persons in the car were Sheru, Azaad, Azrudin, Ansar and Abdulla. They physically assaulted her beatings on the way and took her to village Nuh at Jumma's House. Azrudin and Ansar assaulted the complainant at Jumma's house at Nuh. After that her maternal uncle Mushtaq took her to

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Calcutta in plane. Her maternal uncle made her to appear before the Punjab and Haryana High Court, Chandigarh. Mohammad Asif Ali also appeared before the Hon'ble Court once. They both were sent to protection home at Sector 19, Chandigarh. Complainant made an application to Protection Incharge requesting her to go to Police station Baltana for lodging complaint against the above said incident.

3. Learned counsel for the petitioners submits that petitioners were earlier granted bail vide orders dated 23.05.2018 and 18.09.2018 by learned Court below. Petitioner never misused the concession of bail. However, on 11.05.2023, petitioners were unable to attend the Court as their co-accused, namely, Hassan Mohammad (co-villager of the petitioners) had expired and they were held up in performing his last rites and ceremonies since deceased was their co-villager as well as a near one to them. As ill luck would have been, their case was though fixed for hearing on 05.06.2023, but due to miscommunication, petitioners noted down the aforesaid next date as 05.07.2023 and that is why, they could not appear on 05.06.2023. Meanwhile, vide order dated 05.06.2023 (Annexure P-2) their bail was cancelled and bonds forfeited to the State, and non-bailable warrants were also issued against them. Non-appearance of the petitioner was neither intentional nor deliberate but due to noting of wrong date of hearing. Thereafter, petitioners approached the learned Court below by filing an application seeking grant of anticipatory bail, but vide order dated 19.08.2023, the same was declined.

4. On advance service of petition, learned State counsel appears and does not strongly opposes the petition.

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

6. 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 others**”¹ 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 issue bailable 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-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants."

7. The order dated 05.06.2023 passed by learned Court below being apposite is reproduced herein below:-

"An application, seeking exemption from personal appearance of accused Ansar, Azarudin and Madni has been filed. Heard. In view of the averments mentioned in the application, personal appearance of said accused is exempted for today only.

Death certificate of accused Hassan Mohd. has not been placed on record. Let notice to the concerned SHO be called for 18.07.2023, with direction to verify the fact qua death of accused Hassan Mohd. and to submit the death report qua the said accused, positively on or before the date fixed.

*The case is fixed for filing reply by the Ld. Defence Counsel to the application under Section 216 Cr.P.C. for amendment of charge, however, accused namely **Mohd. Rafiq, Sher Singh, Azad, Nasroo, Kayum, Abdula, Shera, Sadaq, Sadam Hussain, Sabbir Hussain, Juber and Wahid** have not appeared in the court. Case called at 10:00 am, then at 11:00 am and thereafter again at 12:00 noon but none has appeared on behalf of the above-mentioned persons.*

Upon asking the Ld. Defence Counsel qua the above- mentioned twelve accused, who have not appeared in the court today, the Ld. Defence Counsel has stated that he has received no intimation from the said accused persons as to whether they are appearing in the court or not. Now, it's already 12:30 pm but none has turned up. The undersigned will be on leave in the post-lunch session.

*Hence, the bail order of accused **Mohd. Rafiq, Sher Singh, Azad, Nasroo, Kayum, Abdula, Shera, Sadaq, Sadam Hussain, Sabbir Hussain, Juber and Wahid** stands cancelled and bail bonds and surety bonds of the said accused persons stands cancelled and forfeited to the state.*

*Let the presence of accused **Mohd. Rafiq, Sher Singh, Azad, Nasroo, Kayum, Abdula, Shera, Sadaq, Sadam Hussain, Sabbir Hussain, Juber and Wahid** be procured through non-bailable warrants of arrest, which be issued for 18.07.2023. Further, notice to surety of said accused persons in terms of Section 446 Cr.P.C. be also issued for the date fixed.*

Long date is being given due to summer vacation."

7.1. It is rather intriguing that Court below should have shown such haste knowing fully well that Court that it was still 12:30 p.m., and merely because Presiding Judge was not to sit post-lunch session, it was perhaps in a rush and passed the aforesaid order.

8. Concededly, petitioners were earlier granted bail by the learned Court below vide orders dated 23.05.2018 and 18.09.2018. Their absence on the date fixed before Court below was unintentional since they noted wrong date of hearing as 05.07.2023 instead of 05.06.2023. I find that the non-appearance on the date fixed was due to miscommunication between the petitioners and their counsel before Court below.

9. 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. In the premise, exercising inherent powers vested in this Court under Section 482 Cr. P.C., order 05.06.2023 to the extent of cancellation of bail and notice to surety, is set aside. Earlier bail order stands revived on bail bond and surety bond already furnished by the 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.

11. Petition is accordingly disposed of.

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

(ARUN MONGA)
JUDGE

October 17, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No