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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-52120 of 2023 (O&M)
DATE OF DECISION: 13.10.2023****Ghanshyam Sharma****...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Munish Behl, Advocate,
For the petitioner.

Ms. Svaneel Jaswal, Addl. AG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein is under Section 482 Cr.P.C seeking quashing of order dated September 14, 2023 (Annexure P-4) passed by learned Additional Sessions Judge, Ambala, whereby petitioner's bail was cancelled, his bail/surety bonds were forfeited to State and warrants of arrest were issued against him in case FIR No.101 dated March 17, 2020 registered under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") (Section 29 of Act added later) at the Parao Police Station in Ambala Cantt.

2. Per FIR, 7 kg 124 grams of Opium was recovered from co-accused Gurmail Singh, who in his disclosure statement named co-accused Satpal @ Sattu. Further co-accused Satpal @ Sattu in his disclosure statement disclosed that he purchased the Opium from present petitioner.

3. Learned counsel for the petitioner contends that petitioner was falsely implicated in the case. Neither he was named in the FIR, nor any recovery was effected from him. He was not even present at the place of alleged recovery. He further urges that merely because co-accused Satpal alias Sattu in

his disclosure statement named the present petitioner, police was making all out efforts to arrest the petitioner. Under these circumstances, petitioner approached the Court of learned Additional Sessions Judge, Ambala, seeking relief of pre-arrest bail, which was granted in his favour.

3.1. Learned counsel for petitioner further canvasses that after getting the relief of bail, petitioner regularly appeared before learned trial Court from July 08, 2021 to July 06, 2023 and did not commit any default at any point of time. Learned counsel would further argue that on September 14, 2023, an application for exemption from personal appearance of petitioner was moved by his counsel on medical grounds mentioning therein that petitioner is a diabetic and suffering from viral infection and that he was unable to attend the Court. Learned trial Court declined said application and cancelled bail/surety bonds of petitioner. Warrants of arrest were ordered to be issued against him.

3.2 Learned counsel for petitioner further submits that default in appearance was due to circumstances beyond control of petitioner. Further submits that his non-appearance was neither wilful nor intentional as he was regularly attending the trial for the last more than three years. However, without issuing any prior notice to the petitioner, learned trial Court erroneously cancelled the bail of petitioner and without thus giving an opportunity of being heard issued non-bailable warrants. Resultantly, the impugned order is unsustainable in law.

4. Per contra, learned State counsel opposes the petition and contends that bail granted to petitioner was rightly cancelled by learned Court below since he deliberately chose not to appear on the date fixed and violated the terms of bail bonds.

5. 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 Uttarakhand 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.”*

6. 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.

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. Impugned order dated 14.09.2023 shows that an application was also moved by petitioner’s counsel seeking his exemption from personal

appearance stating that he was suffering from viral, along with prescription slip. It seems that absence of petitioner was not intentional but was due to illness.

9. 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.

10. However, it is made clear that any observations and/or submissions noted herein above shall not have any effect on merits of the case as the same are for the limited purpose of deciding the instant petition alone and learned trial Court shall proceed in accordance with law without being influenced with this order.

11. Petition is accordingly allowed.

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

OCTOBER 13, 2023
Shalini

(ARUN MONGA)
JUDGE

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