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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-54148-2023 (O&M)

Date of decision: October 30, 2023

Pardeep Kumar

....Petitioner

versus

State of Haryana

....Respondent

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

Ms. SvaneelJaswal, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein is under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr. P.C.') seeking quashing of order dated 05.06.2023 (Annexure P-28) passed by learned Sessions Judge, Fatehabad, whereby petitioner's bail was cancelled, his bail/surety bonds were forfeited to State and warrant of arrest was issued him, in case FIR No.198 dated 03.11.2018, under Sections 201, 307, 34, 341, 506 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), registered at Jakhal Police Station, in District Fatehabad (charge-sheeted under Sections 201, 307, 34, 341, 506 IPC).

2. Learned counsel for the petitioner contends that vide order dated 06.05.2022 (Annexure P-2), petitioner was granted regular bail by a co-ordinate Bench of this Court. Petitioner was appearing regularly before Court below. On 13.04.2023, trial was fixed for examination of remaining prosecution witnesses. However, same could not be done and case was adjourned to 05.06.2023. Petitioner along with his parents could not appear before the Court below on 05.06.2023 due to noting down of wrong date as 07.06.2023. Due to non-appearance of petitioner, learned trial Court vide impugned order dated 05.06.2023 cancelled bail order of the petitioner, his bail bonds and surety bonds were forfeited to the State and warrant of his arrest was issued.

2.1. Learned counsel for the petitioner also contends that non-appearance in the present case before the Court below is not intentional or deliberate, but due to noting down of wrong date. However, learned trial Court erroneously cancelled his bail/surety bonds and

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without giving an opportunity of being heard, issued warrant of his arrest. Resultantly, the impugned order is unsustainable in law.

3. On advance service of copy of petition, learned State counsel appears and *per contra*, he 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.

4. No doubt, learned trial Court has got discretion to cancel the bail. However, 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. In “**Raghuvansh Dewanchand Bhasin versus State of Maharashtra and another¹**”, the Apex Court after taking into account several precedents, elucidated the following:

“9. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The Courts have to be extra-cautious and careful while directing issue of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual’s rights, liberties and privileges on the one hand, and the State on the other. Indeed, it is a complex exercise. As Justice Cardozo puts it “on the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice.” Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter-alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of his absconding.

5. In the instant case, 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

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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 any default.

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

(ARUN MONGA)
JUDGE

October 30, 2023

jyoti thakur

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No