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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH****CRM-M-52576 of 2023 (O&M)****DATE OF DECISION: October 16, 2023****Pavan @ Pawan Kumar****...Petitioner****Versus****State of Punjab and another****...Respondents****CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Ruhani Chadha, Advocate,  
For the petitioner.

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

**ARUN MONGA, J. (ORAL)**

Petition herein is under Section 482 Cr.P.C seeking quashing of order dated July 21, 2023 (Annexure P-5) passed by learned Judicial Magistrate First Class, Jalandhar, whereby non-bailable warrants of arrest were issued against him in case FIR No.137 dated July 21, 2021 registered under Section 381 of IPC at the Basti Bawa Khel Police Station in Jalandhar.

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 contends that petitioner was released on bail by learned Court below vide order dated August 12, 2021 (Annexure P-2). He further submits that during the trial, petitioner was attending the court proceedings regularly till March 03, 2023. However, on May 11, 2023, petitioner and his counsel could not appear and bailable warrants of petitioner were issued. On the next date of hearing i.e. July 21, 2023, bailable warrants remained unexecuted. Notwithstanding, non-bailable warrants of petitioner were issued. Hence, the instant petition.

5. Learned counsel for petitioner further states that absence of petitioner was not deliberate. He further submits that due to wrong noting down next date of hearing, both petitioner and his counsel could not appear and his non-bailable warrants were issued on 21.07.2023.

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. Resultantly, the impugned order is unsustainable in law. Further urges that petitioner is not involved in any other case under the IPC nor he has been declared as a proclaimed offender in this case.

7. On the other hand, learned State counsel submits that learned trial Court rightly issued non-bailable warrants against 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 issue non-bailable warrants against the petitioner. However, reference may be had to Apex Court judgment in case titled ***“Inder Mohan Goswami and another v. State of Uttaranchal and others”***<sup>1</sup> 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 theailable warrants should be preferred. The warrants eitherailable or non-ailable 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."*

10. 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 issuance of non-ailable warrants deserves to be set aside.

11. Moreover, matters of personal liberty ought not to be taken so lightly and in such mechanical manner as in the case herein.

12. There being sufficient reasons beyond control of the petitioner which caused his default on two dates of hearing, I am of the view that impugned order deserves to be set aside. Ordered accordingly. 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.

13. 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.

14.           Petition is accordingly allowed.
15.           Pending application(s), if any, shall also stand disposed of.

October 16, 2023  
vandana

(ARUN MONGA)  
JUDGE

Whether speaking/reasoned :           Yes/No

Whether reportable :                    Yes/No