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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-53136 of 2023 (O&M)
DATE OF DECISION: 18.10. 2023****Gurwinder Singh @ Nona****...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Hitesh Chopra, Advocate,
For the petitioner.

Mr. Dhruv Dayal, Addl. AG, Punjab.

ARUN MONGA, J. (ORAL)

Petition herein is under Section 482 Cr.P.C seeking quashing of impugned order dated 22.09.2023 (Annexure P-4) passed by learned Additional Sessions Judge, Gurdaspur, whereby petitioner's bail was cancelled, his bail/surety bonds were forfeited to State and warrants of arrest were issued against him in FIR No.079 dated 20.07.2018 registered under Sections 21 & 22 of NDPS Act, 1985 (hereinafter referred to as "the Act") at Police Station Fatehgarh Churian, District Batala.

2. Per First Information Report, on 20.07.2018, ASI along with fellow police officials was on patrolling in search of bad elements. When they reached bus stand, ASI Balbir Singh, ASI Baljit Singh, ASI Prabh Pal Singh, PHC Sarabjit Singh, PHC Jagtar Singh, Ct. Talwinder Singh met them who were also joined in the police party. When the police party reached Majitha chowk, then from the side of Majitha, one non-sikh young boy was seen coming on foot, who on seeing the police party tried to take U-turn and also tried to throw some substance wrapped in an envelope after taking same out of the right pocket of his trouser. On the basis of suspicion, he was apprehended.

The polythene envelope which he was carrying in his right hand was checked

and 220 intoxicating tablets without label and 02 grams of heroine were recovered from same. The recovered contrabands were sealed in separate parcels. Ruka was sent on the basis of which formal FIR was registered. Investigation was carried out. Petitioner was arrested.

3. Learned counsel for the petitioner contends that the alleged recovery of contraband is non-commercial in nature. Petitioner has been falsely implicated in the case. Petitioner was initially released on interim bail which was made absolute vide order dated 06.09.2018.

3.1 Learned counsel for petitioner would argue that after getting the relief of bail, petitioner regularly appeared before learned trial Court from 06.09.2018 to 28.08. 2023 and did not commit any default at any point of time. He wrongly noted the date as 22.10.2023 whereas it was 22.09.2023.

3.2 Learned counsel would further argue that petitioner's non-appearance on 28.08.2023 was neither willful nor intentional. He had been regularly attending the trial for over five years. However, without issuing any prior notice to the petitioner, the learned trial Court cancelled his bail and surety bonds and issued non-bailable warrants, without giving him an opportunity to be heard. Consequently, the impugned order is unsustainable in law. He further contends that petitioner is yet to be declared a proclaimed person.

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, 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 v. State of Maharashtra and another”*¹,

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, it is no gainsaying that the welfare of an individual must yield to that of 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 absconding. (Also See: **State of U.P. v. Poosu & Anr., (1976) 3 SCC 1.**)”*

6. 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 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.

7. 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.

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

OCTOBER 18, 2023
Shalini

(ARUN MONGA)
JUDGE

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