

126

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-52964 of 2023 (O&M)
DATE OF DECISION: 18.10. 2023****Rahul Chandok****...Petitioner****Versus****State of Punjab and another****...Respondents****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 07.10.2023 (Annexure P-5) 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.12 dated 15.01.2019 registered under Sections 304, 201 read with Section 120-B of IPC at Police Station Civil Lines Batala, District Gurdaspur.

2. Learned counsel for the petitioner contends that after getting the relief of bail, petitioner regularly appeared before learned trial Court from 17.08.2021 to 10.08. 2023 and did not commit any default at any point of time.

3. Learned counsel further contends that petitioner moved an application for exemption from personal appearance on 07.10.2023 on account of illness of his wife which was declined by learned trial Court.

3.1 The learned counsel would further argue that the petitioner's non-appearance on 07.10.2023 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.

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. It is so 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.

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