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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-53149 of 2023 (O&M)****DATE OF DECISION: October 18, 2023****Kaushalya Devi****...Petitioner****Versus****State of Punjab and another****...Respondents****CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Sukhmeet Singh, 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 order dated September 11, 2023 (Annexure P-26) passed by learned Judicial Magistrate 1st Class, Faridkot, whereby petitioner's bail was cancelled, his bail/surety bonds were forfeited to State and warrants of arrest were issued against him in a complaint case bearing No.NACT-12-2021 titled "Harjit Singh v. Kaushalya Devi" under Section 138 of Negotiable Instruments Act, 1881 (for short "the Act").

2. Pledged case of petitioner is that respondent No.2 herein filed a complaint under Section 138 of the Act on January 06, 2021 alleging that petitioner herein borrowed a sum of Rs.1,00,000/- from respondent No.2 along with interest @ 2% per annum. A pronote and receipt was also executed in this regard. In order to discharge his legal liability, petitioner issued one cheque bearing No.017758 for Rs.1,48,000/- (Rs.1,00,000/- as principal amount and Rs.48,000/- as interest). The said cheque was issued on November 02, 2020 but on the cheque the date was mentioned as November 25, 2020. On presentation of cheque, same was dishonoured with remarks "Payment Stopped by the

drawer”. Legal notice dated December 15, 2020 was also issued but to no avail. Hence, the complaint.

3. Learned counsel for the petitioner contends that after getting the relief of bail, petitioner regularly appeared before learned trial Court from January 18, 2022 to August 16, 2023 and did not commit any default at any point of time.

3.1 Learned counsel for petitioner further contends that petitioner approached learned Sessions Court seeking concession of anticipatory bail which was dismissed vide order dated October 09, 2023.

3.2 Learned counsel would further argue that non-appearance of petitioner was neither willful nor intentional, as she was regularly attending the trial for the last more than two years. However, learned trial Court erroneously cancelled her bail/surety bonds and without giving an opportunity of being heard, issued non-bailable warrants. Resultantly, the impugned order is unsustainable in law. It is further contended that petitioner is suffering from heart problem and various other ailments due to which she could not appear before learned trial Court.

4. Per contra, learned State counsel opposes the petition and contends that bail granted to petitioner was rightly cancelled by learned Court below since she 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:

SHALINI BHATIA¹ (2012) 9 SCC 791
2023.10.20 18:48
I attest to the accuracy and
integrity of this order/ judgment

*“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