

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

105

CRM-M-53656-2023

Date of decision: 20.10.2023

Gurmej Singh

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms.Harmeet Kaur Chanan, Advocate for the petitioner.

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

ARUN MONGA, J. (ORAL)

Petition herein is under Section 438 Cr.P.C seeking anticipatory bail to the petitioner in FIR No.28 dated 31.01.2022, under Section 379-B IPC, registered at Police Station Jandiala, District Amritsar Rural.

2. Although, this petition has been filed for anticipatory bail, however, in course of hearing, learned counsel submits that she ought to have challenge the order dated 31.08.2023 (Annexure P-2), vide which the bail granted to the petitioner was cancelled and his bail/surety bonds were forfeited to the State. On her request, Section 482 of Cr.P.C. is added in the head note of the petition. Registry to take steps accordingly.

3. Learned counsel for the petitioner contends that after getting the relief of bail, petitioner regularly appeared before learned trial Court to face trial. However on 31.08.2023, the petitioner could not appear before the trial Court due to noting of wrong date. Learned trial Court proceeded to issue non-bailable warrants of the petitioner on the same day. She further submits that learned trial Court erroneously cancelled his bail/surety bonds and without giving an opportunity of being heard, issued non-bailable warrants. Resultantly, 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. This Court exercising inherent powers under Section 482 Cr.P.C., 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”***, 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.

20.10.2023

D.Bansal/vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No