

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

135

CRM-M-53863-2023

Date of decision: 20.10.2023

Rajinder Singh alias Billa

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Harmanpreet Sehla, 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 19.04.2023 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Gidderbaha, whereby petitioner's bail was cancelled, his bail/surety bonds were forfeited to State and non-bailable warrants were issued against him in an FIR No.28 dated 02.03.2019, under Section 61 of the Punjab Excise Act, 1914, Police Station Kotbhai, District Sri Muktsar Sahib, Punjab.

2. In brief, the allegations in the said FIR are that when the police party was present near Grain Market of village Kotbhai, the petitioner, who was coming from village Chotian in a car, was stopped. It is further alleged that on checking the vehicle, 24 bottles of Indian made liquor were recovered from the car and the present FIR came to be registered against the petitioner.

3. Learned counsel for the petitioner contends that after getting the relief of bail, petitioner regularly appeared before learned trial Court except on 27.09.2022 as the Presiding Officer was on leave on that day and the petitioner remained under the impression that the case will not be taken up and that he did not commit any default at any point of time. Thereafter, the petitioner could not appear before the learned trial Court due to wheat harvest season as petitioner was working as a labourer. Due to

non-appearance of petitioner, learned trial Court vide order dated 19.04.2023 cancelled the bail order of petitioner, bail bonds and surety bonds were forfeited to the State and non-bailable warrants were issued.

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 25.05.2023.

3.2 Learned counsel would further argue that non-appearance of petitioner was neither willful nor intentional, as he was regularly attending the trial for the last more than one and half years. However, 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. 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 aailable 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