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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-53964-2023 (O&M)

Date of decision: October 30, 2023

Joga Singh @ Jugga Singh @ Rajbir Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Prateek Pandit, Advocate for petitioner.

Mr. Dhruv Dayal, Additional AG Punjab.

ARUN MONGA, J. (ORAL)

Petition herein is under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr. P.C.') seeking quashing of order dated 15.11.2022 (Annexure P-4) passed by learned Judge, Special Court, Kapurthala, whereby petitioner's bail was cancelled, his bail/surety bonds were forfeited to State and non-bailable warrants were issued against him, in case FIR No.15 dated 04.02.2022, under Sections 21(a), 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), registered at Subhanpur Police Station, in District Kapurthala.

2. Learned counsel for the petitioner contends that vide order dated 07.07.2022 (Annexure P-2), petitioner was granted regular bail by learned Court below. Challan was presented in the Court on 27.09.2022 (Annexure P-3) and the case was adjourned to 15.11.2022. However, petitioner noted down wrong date and could not appear before the Court below on 15.11.2022. Learned counsel further submits that in December, 2022, petitioner met with an accident and was hospitalized at J.J. Trauma Centre and Hospital, Kapurthala. Due to non-appearance of petitioner, learned trial Court vide impugned order dated 15.11.2022 (Annexure P-4), cancelled bail order of the petitioner, his bail bonds and surety bonds were forfeited to the State and non-bailable warrants were issued against him.

2.1. Learned counsel for petitioner further contends that petitioner is facing trial in another FIR No.45 dated 16.04.2022 before the same Court below. He is on bail in that case and is appearing regularly.

2.2. 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, contends the counsel.

3. On advance service of copy of petition, learned State counsel appears and *per contra*, he 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.

4. 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 versus State of Maharashtra and another¹”**, 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, there is no gainsaying that the welfare of an individual must yield to that of the 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 his absconding.

5. 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

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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.

6. 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.

7. Petition is accordingly allowed.

8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 30, 2023
jyoti thakur/mahavir
Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No