

CRM-M-12486-2024
Date of decision: 13.03.2024

Jatinder SinghPetitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.L. Chander Shekhar, Advocate
for the petitioner.

Mr. Subhash Godara, Addl.A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 20.11.2023 (Annexure P-7) passed by the learned trial Court, whereby, the bail order has been cancelled and bail bonds/surety bonds of the petitioner have been cancelled and forfeited to the State followed by issuance of non-bailable warrants in complaint case No. NACT/1352/2021 dated 27.04.2021 under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act'), titled as 'Nirmal Jit Singh Vs. Jatinder Singh.'

2. Learned counsel appearing for the petitioner *inter alia* contends that petitioner had taken a friendly loan of Rs.2,87,000/- from respondent No.2 and further assured respondent No.2 that the said amount would be returned but the petitioner did not return the same. Thereafter, respondent No.2 has filed a complaint where the petitioner appeared and after the intervention of the respectables and friends, the matter has been compromised to Rs.2,50,000/- and

in order to discharge his liability, the petitioner issued two cheques out of which one cheque bearing No.357162 dated 25.01.2021 amounting to Rs.1 lakh, was dishonoured vide memo dated 04.03.2021. Thereafter, respondent No.2 has filed a complaint under Section 138 of the Act before the learned trial Court and to resolve the dispute, the petitioner entered into compromise before the learned trial Court on 20.07.2023 and it was settled that petitioner will pay Rs.2 lakh and out of the said amount, he will pay Rs.50,000/- to the complainant/respondent No.2 on the next date of hearing i.e. 16.08.2023 and rest of the amount will be paid in five equal monthly instalments. On 20.07.2023, the petitioner has paid an amount of Rs.50,000/- in cash to the complainant/respondent No.2. On 20.09.2023, the petitioner has paid an amount of Rs.25,000/- in cash to the complainant/respondent No.2 and undertakes to pay Rs.35,000/- on the next date of hearing. Thereafter, the petitioner fell ill and could not appear before the learned trial Court on 20.10.2023 and his counsel made an application for exemption from personal appearance. Thereafter, on 20.11.2023, due to non-appearance of the petitioner, his bail bonds/surety bonds were cancelled and forfeited to the State and non-bailable warrants were issued for 04.01.2024 and proclamation proceedings were also initiated against him.

3. Learned counsel appearing for the petitioner submits that the non-appearance of the petitioner was not deliberate and intentional and thus, aggrieved by the said order, he has approached this Court by way of instant petition. It is contended that the impugned order is liable to be set aside on the ground of unintentional non-appearance of the petitioner due to his illness.

4. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

5. Notice of motion.

6. Mr. Subhash Godara, Addl.A.G., Punjab, who is present in Court, accepts notice for the respondent and submits that the impugned order has been passed on the sole ground of the absence of the petitioner, however, it is not disputed by him that petitioner was already on bail and had been appearing before the trial Court.

7. I have heard learned counsel for the parties and perused the record of the case with their able assistance and with the consent of parties, the matter is taken up for final disposal.

8. A perusal of the order dated 20.11.2023 (Annexure P-7) reflects that the trial Court proceeded to pass the extreme order of cancellation of bail for the solitary absence of petitioner. Many a times, the accused can be prevented by sufficient reasons to put an appearance before the Court on a given date and, therefore, it necessarily cannot be construed as a deliberate and wilful absence. The explanation offered for non appearance before the trial Court is justified and, therefore, the same is accepted.

9. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

10. The sole purpose of issuance of non-bailable warrants is to secure

presence of the accused before the trial Court. The petitioner in the present case has himself come forward and has undertaken to appear before the trial Court on each and every date.

11. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to the respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2 and the impugned order dated 20.11.2023 (Annexure P-7), vide which the bail bonds and bail order of the petitioner was cancelled and non-bailable warrants were issued, is hereby set aside.

12. The petitioner is directed to appear before the trial Court within a period of 15 days from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.5,000/- to be deposited with the District Legal Services Authority, Amritsar, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

13.03.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No