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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-16763-2024 (O&M)
Date of decision: 05.04.2024

Nitin Jain and another

... Petitioners

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. M.S. Sachdev, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 06.03.2024 (Annexure P-8) passed by the learned trial Court in Complaint case bearing No.COMI/173/2022 dated 20.07.2022 under Sections 406 & 498-A of the Indian Penal Code, 1860 (for short 'IPC') titled as *Anchal Goenka Vs. Nitin Jain and another*, whereby bail/surety bonds are cancelled and non-bailable warrants have been issued against the petitioner as well as all the consequential proceedings emanating therefrom.
2. Learned counsel for the petitioner, *inter alia*, contends that at the instance of respondent No.2, FIR No.26 dated 26.05.2018 under Sections 406 & 498-A of IPC was registered at Police Station Women, District Police

Commissionerate, Amritsar and after completion of the investigation, cancellation report was submitted by the police, which was accepted by the learned Illaqa Magistrate and the protest petition filed by the complainant was ordered to be treated as complaint vide order dated 22.01.2021 (Annexure P-2) and in the said complaint, vide order dated 07.02.2023 (Annexure P-3), the petitioners were summoned to face the trial. It is further contended that the petitioners were granted the concession of anticipatory bail by the learned Sessions Judge, Amritsar and thereafter, they were regularly appearing before the learned trial Court. On 06.03.2024, an application for exemption from personal appearance was moved on the ground that petitioner No.2 had gone out of station for some urgent work, but the learned trial Court dismissed the same and bail/surety bonds of the petitioners were cancelled and forfeited to the State and non-bailable warrants have been issued.

3. Learned counsel for the petitioners submits that the non-appearance of the petitioners was not deliberate and intentional and thus, aggrieved by the said order, they have 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 petitioners due to the aforesaid reason.

4. It is also submitted that the petitioners undertake 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 respondent No.1-State and Mr. Vaibhav Narang, Advocate accepts notice for respondent No.2 and files his *Power of Attorney*, which is taken on record. They contend that both the accused again moved application for exemption from personal appearance despite the fact that similar application was dismissed by the learned trial Court on the last date of hearing. It is further submitted that the petitioners have failed to appear in the Court after obtaining bail in the present case and they are intentionally playing hide and seek with the proceedings of the Court. It is also submitted that keeping in view the previous conduct of the petitioners and the order dated 31.01.2024, their application for exemption from personal appearance was rightly dismissed by the Court. They submit that the impugned order has been passed on the sole ground of the absence of the petitioners, however, it is not disputed by them that petitioners were 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 impugned order dated 06.03.2024 (Annexure P-8) reflects that the trial Court proceeded to pass the extreme order of cancellation of bail. 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 willful

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 petitioners in the present case have themselves come forward and have 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. The impugned order dated 06.03.2024 (Annexure P-8), vide which the bail/surety bonds and bail order of the petitioners was cancelled and non-bailable warrants were issued against them, is hereby set aside.

12. The petitioners are directed to appear before the trial Court within a period of four weeks from today and on their doing so, they will be admitted to bail on their furnishing bail/surety bonds to the satisfaction of learned trial Court, along with costs of Rs.10,000/- each to be deposited with

the District Legal Services Authority, Amritsar, for wasting precious time of the Court. The petitioners are further directed to attend the trial on each and every date of hearing.

05.04.2024
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[HARPREET SINGH BRAR]
JUDGE

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