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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35905-2024

Date of decision: 01.08.2024

Shamsher

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Sukesh Kumar Jindal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.403 dated 23.09.2021 under Section 15(2) of the POCSO Act, Sections 66-E/67-A of the I.T. Act, 2000 and Section 201 of IPC registered at Police Station Industrial Sector 29, Panipat.

The FIR (*supra*) was lodged on the statement of the complainant that on 18.07.2021, the accused/petitioner sent an obscene video of the daughter of the complainant on the mobile phone of the complainant and his daughter was subjected to rape/sexual assault by three persons, namely, Anuj, Himanshu and Pankaj and, thus, the instant FIR was registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been granted the relief of regular bail by the learned Additional Sessions Judge/Fast Track Court, Panipat vide order dated 27.01.2022. Thereafter, he continued to appear before the learned trial Court but on 01.02.2024, he could not appear and an application for exemption from his personal appearance was filed which was dismissed and bail of the petitioner was cancelled and bail bonds were forfeited to the State followed by issuance

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of non-bailable warrants against him.

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.

Notice of motion.

Ms. Geeta Sharma, DAG, Haryana who is present in Court, accepts notice for the respondent and submits that the bail has been cancelled on the sole ground of the absence of the petitioner, however, it is not disputed by her that petitioner was already on bail and had been appearing before the trial Court. She further submits that the petitioner has undergone total sentence of 04 months and 02 days as on 31.07.2024.

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.

A perusal of the order dated 01.02.2024 (Annexure P-3) 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.

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.

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner has surrendered himself before the learned Additional Sessions Judge on 06.06.2024 and petitioner is behind the bars for 04 months and 02 days as per custody certificate. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Shamsher is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

01.08.2024

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