



120

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-46130-2024 (O&M)
Date of decision: 17.09.2024

Rajnish Sehgal

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Namit Khurana, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for quashing of order dated 17.07.2024 (Annexure P-3) passed by learned Additional Sessions Judge/Fast Track, Special Court (POCSO), Karnal, in FIR No.108 dated 17.11.2020 under Section 12 of of the Protection of Children from Sexual Offences Act, 2012 and Section 354 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Women Police Station Karnal, vide which bail of the petitioner was cancelled and bail/surety bonds were forfeited to the State and non-bailable warrants were issued.



2. Brief facts of the case, as alleged, are that on the eve of Diwali, the petitioner made obscene gestures towards wife of the complainant and he also tried to hold hand of his minor daughter. The petitioner also committed wrong acts with the children and ladies of the society many times.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner was on bail in the FIR (*supra*) and was regularly appearing before learned trial Court and being General Secretary of Residents Welfare Association, he opposed illegal activities in the society and filed complaints against one Nitin Khurana and Vikas Sethi, who assaulted him. It is further contended that due to some unavoidable circumstances, the petitioner could not appear before learned trial Court on 17.07.2024 and for his sole absence, learned trial Court, vide impugned order dated 17.07.2024, cancelled his bail and his bonds were forfeited to the State and non-bailable warrants along notice to the surety were issued.

4. Learned counsel for the petitioner further submits that 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 aforementioned facts.

5. Notice of motion.

6. Ms. Geeta Sharma, DAG, Haryana, who is present in Court,



accepts notice for the respondent-State 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 her that the petitioner was already on bail and had been appearing before learned trial Court.

7. Having heard learned counsel for the parties and after perusing 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 17.07.2024 (Annexure P-3) reflects that learned trial Court proceeded to pass the extreme order of cancellation of bail for the solitary absence. 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 learned 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 learned trial Court. The petitioner in the present case has himself come forward and has undertaken to appear before learned trial Court on each and every date.

11. In view of the aforesaid facts and circumstances, present petition is allowed and the impugned order dated 17.07.2024 (Annexure P-3) is hereby set aside.

12. The petitioner is directed to appear before learned trial Court within a period of two weeks from today and on his doing so, he shall be admitted to bail on his furnishing same bail/surety bonds to the satisfaction of learned trial Court, along with costs of Rs.5,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

13. The receipt of payment of costs imposed upon the petitioner must be presented before learned trial Court. Learned Court below is directed to grant bail to the petitioner only upon verification of the payment of said costs.

17.09.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No