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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-47511-2024 (O&M)
Date of decision: 23.09.2024

Harpreet Singh @ Honey

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Navraj Singh, 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 05.08.2024 (Annexure P-2) passed by learned Additional Sessions Judge, Kapurthala, in a case arising out of FIR No.67 dated 25.03.2021 under Sections 366 & 120-B of the Indian Penal Code, 1860 (for short 'IPC') (Sections 376, 363, 376-D of IPC added and Sections 376-D & 120 of IPC deleted later on), registered at Police Station City Phagwara, District Kapurthala, vide which, while cancelling the bail of the petitioner,



his bail/surety bonds have been forfeited to the State and non-bailable warrants have also been issued.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner was on regular bail in the FIR (*supra*) and was regularly appearing before learned trial Court, but due to noting the wrong date as 07.08.2024 instead of 05.08.2024, he could not appear before the Court and due to his non-appearance, vide impugned order dated 05.08.2024 (Annexure P-2), learned trial Court cancelled bail of the petitioner and his bail/surety bonds were forfeited to the State and non-bailable warrants along notice to the surety were issued.

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

4. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in the 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 him that the petitioner was already on regular bail and had been appearing before learned trial Court.

6. 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.

7. A perusal of the order dated 05.08.2024 (Annexure P-2) reflects that learned trial Court proceeded to pass the extreme order of cancellation of bail for the solitary absence of the 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 willful absence. The explanation offered for non-appearance before learned trial Court is justified and, therefore, the same is accepted.

8. 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.

9. 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.

10. In view of the aforesaid facts and circumstances, present petition is allowed. The impugned order dated 05.08.2024 (Annexure P-2) is hereby set aside.

11. The petitioner is directed to appear before learned trial Court within a period of four 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.10,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

12. 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.

23.09.2024

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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No