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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-61276-2024 (O&M)

Date of decision: 09.12.2024

Das Raj and another

... Petitioners

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanjeev K. Virk, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for quashing of the order
dated 17.07.2024 (Annexure P-2) passed by learned Judicial Magistrate 1st
Class, Phillaur, in a case bearing CIS No.CHI-47-2023, arising out of FIR
No.88 dated 29.10.2021 under Sections 377 & 323 of the Indian Penal Code,
1860 (for short 'IPC'), registered at Police Station Nurmahal, District

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Jalandhar, vide which bail of the petitioners was cancelled and bail/surety bonds were forfeited to the State and non-bailable warrants were issued against them.

2. Learned counsel for the petitioners, *inter alia*, contends that the petitioners were on bail in the FIR (*supra*) and were regularly appearing before learned trial Court, however, due to noting the wrong date as 27.07.2024 instead of 17.07.2024, they could not appear before learned trial Court on 17.07.2024 and due to their non-appearance, vide impugned order dated 17.07.2024, learned trial Court cancelled bail of the petitioners and their bail/surety bonds were forfeited to the State and non-bailable warrants along notice to their sureties were issued.

3. Learned counsel for the petitioners further submits that 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 filing the 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 aforementioned facts.

4. Learned counsel submits that the petitioners undertake to appear before learned trial Court on each and every date.

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5. Notice of motion.

6. Mr. Subhash Godara, Addl. A.G., Punjab, 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 petitioners, however, it is not disputed by him that the petitioners were already on bail and had been regularly appearing before learned trial Court.

7. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

8. A perusal of impugned order dated 17.07.2024 (Annexure P-2) reflects that learned trial Court proceeded to pass the extreme order of cancellation of bail for solitary absence of the petitioners. 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-

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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 petitioners in the present case have themselves come forward and have undertaken to appear before learned trial Court on each and every date.

11. Keeping in view the aforesaid facts and circumstances of the case, present petition is allowed and the impugned order dated 17.07.2024 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Phillaur, cancelling bail of the petitioners and forfeiting their bail/surety bonds to the State and issuing non-bailable warrants against them along with notice to sureties, is hereby set aside.

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

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Pura Dhobi Mohalla, Jalandhar, for wasting precious time of the Court.

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

09.12.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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