



CRM-M-1274-2025

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

137

CRM-M-1274-2025

Date of decision: 14.01.2025

Rajinder Kumar Nagar and another

...Petitioners

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Kulwinder Bhargav, Advocate for the petitioners.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed under Section 528 of BNSS of 2023 read with Section 482 of Cr.P.C., 1973 seeking quashing of the order dated 19.12.2024 (Annexure P-6) passed by learned Judicial Magistrate Ist Class, Mohali vide which the petitioners were ordered to be summoned through non-bailable warrants in FIR No.0038 dated 13.01.2022 registered under Sections 406, 420, 506, 120-B of IPC at Police Station Sohana, District SAS Nagar, Mohali.

2. Learned counsel for the petitioners has argued that the petitioners had earlier been granted the concession of regular bail by this Court and since then they were regularly appearing before the trial Court. Learned counsel has submitted that the petitioners, on account of serious illness, were unable to appear before the trial Court on 19.12.2024 and accordingly filed the application(s) seeking exemption from personal appearance. However, the trial Court has declined the said exemption application(s) of the petitioners and summoned them through non-bailable warrants of arrest for 15.01.2025 i.e. the next date of hearing. Learned

**CRM-M-1274-2025****2**

counsel has iterated that the non-appearance of the petitioners before the trial Court was solely attributable to their deteriorating health and was entirely unintentional. Furthermore their non-appearance was not willful but was purely on account of their ill health. Learned counsel has contended that the procedure adopted by the learned trial Court in directly issuing the non-bailable warrants against the petitioners at the very first instance is contrary to the settled principles of criminal jurisprudence. It is well established position of law, as reiterated by the Hon'ble Supreme Court, that the Courts are required to adhere to due process while ensuring the presence of the accused. It has been submitted by the learned counsel that in the instant case, the learned trial Court has failed to issue any notice to the petitioners prior to resorting to the issuance of non-bailable warrants and hence such an approach is arbitrary, untenable and contrary to the procedural safeguard enshrined under the law. Learned counsel has further iterated that the petitioners unequivocally undertake to enter appearance before the trial Court as also join the proceedings in accordance with law, the petitioners shall appear before the trial Court on each and every date of hearing and also cooperate therein, in accordance with law for a expeditious culmination of the trial.

3. Notice of motion.

4. Mr. Yuvraj Singh, AAG Punjab, who is present in Court, accepts notice on behalf of the official respondent-State of Punjab. He has opposed the petition in hand by arguing that the allegations against the petitioners are serious in nature, the petitioners have misused the concession of bail earlier extended to them by not appearing before the trial Court & no



CRM-M-1274-2025

3

plausible explanation has been brought forth as to why the petitioners did not appear before the trial Court on the aforesaid date.

5. I have heard learned counsel for the rival parties and have perused the available record.

6. At this juncture, it would be apposite to refer herein to a judgment of the Hon'ble Supreme Court titled as ***Gudikanti Narasimhulu and others vs. Public Prosecutor, High Court of Andhra Pradesh AIR 1978 SUPREME COURT 429***, relevant whereof reads as under:

“10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom- by refusal of bail is not for punitive purpose but for the bi-focal interests of justice-to the individual involved and society affected.

11. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence, of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be close to ours, the function of bail is limited, 'community roots' of the, applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on. the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a Policy favouring release justly sensible.

12. A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should



be minimised. Restorative devices to redeem the man, even, through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offence while on judicially sanctioned 'free enterprise,' should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our constitution.”

6.1. Further, the Hon’ble Supreme Court in a judgment titled as ***Gurcharan Singh vs. State (UT of Delhi) 1978 (1) SCC 118***, has held as under:-

*“Where the granting of bail lies within the discretion of the **court**, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the **court**, the primary inquiry is whether a recognizance or bond would effect that end.”*

6.2. Furthermore, the Hon’ble Supreme Court in a judgment titled as ***Sanjay Chandra vs. CBI (2012) 1 SCC 40***, has held as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the



Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

7. A perusal of the record reveals that an application for exemption from personal appearance was filed on behalf of the petitioners. However, the learned trial Court, while rejecting the said application, straight away proceeded to issue non-bailable warrants against the petitioners. In the considered opinion of this Court, the rejection of the application in hand amounts to an unjustifiable restriction on the procedural rights of the petitioners in the absence of any misconduct, lack of bona fides, or a deliberate attempt to evade the proceedings on their behalf. The issuance of non-bailable warrants must not be exercised in a mechanical manner and the same must be adopted sparingly and only upon the recording of cogent reasons reflecting the necessity of adopting such a stringent course.

8. Keeping in view the entirety of the facts and circumstances of the case; especially the factum of the prime object of cancellation of bail and forfeiture of bail bonds being securing the presence of the accused, the petitioners-accused having come forward themselves to face trial, willingness shown by the petitioners-accused to appear before the trial Court on each and every date in accordance with law, the petitioners having submitted that they shall cooperate for an expeditious culmination of the trial & there being no tangible material brought forward to indicate the likelihood of the petitioners to interfere with the prosecution evidence; this Court is the

considered opinion that the petition in hand deserves to be allowed.



9. It is, thus, directed as follows:
- (i) The impugned order dated 19.12.2024 (Annexure P-6) passed by the learned Judicial Magistrate Ist Class, Mohali is set-aside subject to the petitioners appearing before the trial/concerned Court on or before 15.01.2025 i.e. the next date of hearing fixed in the said Court & shall furnish an undertaking that the petitioners shall continue to appear before the trial/concerned Court on each and every date of hearing. It is clarified that the trial/concerned Court shall be at liberty to impose such other condition(s) upon the petitioners, as deemed appropriate by it in the facts and circumstances of the case.
- (ii) The petitioners shall deposit costs of Rs.15,000/- each with the Punjab and Haryana High Court Employees Welfare Association. It is clarified that payment of the aforesaid costs and production of receipt/proof thereof before the trial/concerned Court shall be condition precedent. In absence of deposit of such costs, the present petition would be deemed to be dismissed without any further reference to the Bench.
- (iii) Pending application(s), if any, stands disposed of.

(SUMEET GOEL)
JUDGE

January 14, 2025
Ajay

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