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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision: 17.02.2025

Harcharan Singh

...Petitioner

V/s

State of Punjab and another

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Karanjeet Singh Brar, Advocate for the petitioner.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed under Section 528 of BNSS of 2023 seeking quashing of the order dated 05.02.2025 (Annexure P-3) passed by learned Additional Sessions Judge, Bathinda vide which the bail granted to the petitioner has been cancelled and non-bailable warrants were issued against him in CRA No.471 of 2018 titled as '***Harcharan Singh Vs. The Bathinda Central Cooperative Bank Limited etc.***'

2. Learned counsel for the petitioner has iterated that the petitioner was convicted by the learned trial Court and held guilty for the commission of offence under Section 138 of the Negotiable Instruments Act, 1881 and was ordered to undergo rigorous imprisonment for a period of 2 years or to pay compensation to complainant to the tune of cheque amount i.e. Rs.6,77,000/- alongwith interest @ 9% per annum from the date of issuance of cheque in question. On an appeal being preferred before the learned Sessions Judge, Bathinda, the sentence imposed upon the petitioner was ordered to be suspended and he was released on bail, vide order dated 11.09.2018

(Annexure P-2). According to the learned counsel, since then, the petitioner



was regularly appearing before the said Court, but sometimes due to old age ailments, he could not appear. On account of his non-appearance his counsel had filed exemption applications and on 03.02.2025 also and case was adjourned to 05.02.2025. On 05.02.2025 counsel for the petitioner could not appear and no application on behalf of the petitioner had been filed, as the said date was not informed to the petitioner. However, the trial Court did not consider the said aspect and wrongly cancelled the bail vide the impugned order and issued non-bailable warrants of arrest against the petitioner. Learned counsel asserts that the issuance of non-bailable warrants was harsh, disproportionate and contrary to the principles governing judicial discretion, particularly when the petitioner's absence was neither deliberate nor to evade the process of law. Learned counsel has contended that the procedure adopted by the learned Sessions Court in directly issuing the non-bailable warrants against the petitioner at the very first instance is contrary to the settled principles of criminal jurisprudence. Further submitted that 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 petitioner 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 petitioner unequivocally undertakes to enter appearance before the Sessions Court as also join the proceedings in accordance with law, the petitioner shall appear before the Sessions 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, at this stage, to respondent No.1 only.

4. Mr. Deepender Singh, Addl. AG, Punjab who is present in Court, accepts notice on behalf of the respondent No.1-State of Punjab. He has opposed the petition in hand by arguing that the allegations against the petitioner are serious in nature, the petitioner has misused the concession of bail earlier extended to him by not appearing before the Sessions Court & no plausible explanation has been brought forth as to why the petitioner did not appear before the trial Court on the aforesaid date.

5. The petition in hand emanates from the proceedings under Section 138 Negotiable Instruments Act, 1881. In the facts & circumstances of the case, this court does not deem it appropriate to call upon respondent No.2 at this stage.

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

7. 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."*

7.1. 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."*



7.2. 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.”

8. A perusal of the record reveals that the proceeding-in question is an appeal against conviction filed by the petitioner himself. There is nothing forthcoming from the records or the impugned order dated 05.02.2025 that non-appearance on the part of the petitioner was deliberate or to evade the process of the Court. The learned Court below was wrongly straightway proceeded to issue non-bailable warrants against the petitioner. In the considered opinion of this Court, issuance of non-bailable warrants in the first instance amounts to an unjustifiable restriction on the procedural rights of the petitioner in the absence of any misconduct, lack of bona fides, or a deliberate attempt to evade the proceedings on his behalf. The issuance of non-bailable

warrants must not be exercised in a mechanical manner. It

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must be adopted sparingly and only upon recording cogent reasons that reflect the necessity of such a stringent course.

9. Keeping in view the entirety of the facts and circumstances of the case; especially the fact that the prime object of cancellation of bail and forfeiture of bail bonds is to secure the presence of the accused; the proceedings in question relate to an appeal against conviction filed by the petitioner himself; willingness shown by the petitioner-appellant to appear before the Appellate Court on each and every date in accordance with law; the petitioner having submitted that he shall cooperate for an expeditious culmination of the appeal & there being no tangible material brought forward to indicate the likelihood of the petitioner to evade the process of justice, this Court is the considered opinion that the petition in hand deserves to be allowed.

10. It is, thus, directed as follows:

(i) The impugned order dated 05.02.2025 (Annexure P-3) passed by the learned Additional Sessions Judge, Bathinda is set-aside subject to the petitioner appearing before the Appellate/concerned Court on or before 04.03.2025 & shall furnish an undertaking that the petitioner shall continue to appear before the Appellate/concerned Court on each and every date of hearing. Apart from the aforesaid condition(s), the petitioner shall also surrender his passport before the Appellate/concerned Court. It is clarified that the Appellate/concerned Court shall be at liberty to impose such other condition(s) upon the petitioner, as deemed appropriate by it in the facts and circumstances of the case.



(ii) The petitioner shall deposit costs of Rs.10,000/- 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 Appellate/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

February 17, 2025
Naveen

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