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

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Date of decision: 29.04.2025

Sunil Kumar

....Petitioner

V/s

Sandeep Kumar Jain

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Vinay Puri, Advocate for the petitioner.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed under Section 528 of BNSS seeking quashing of the order dated 25.03.2025 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Jalandhar vide which the bail granted to the petitioner stands cancelled, his bail bonds and surety bonds stands forfeited to the State and he was ordered to be summoned through non-bailable warrants in a complaint case titled as "*Sandeep Kumar vs. Sunil Kumar*" bearing CIS No:NACT/2866-2021.

2. Learned counsel for the petitioner has iterated that a false case under Section 138 of the Negotiable Instruments Act has been filed against the petitioner in which he is likely to be acquitted. According to learned counsel, the petitioner was granted bail by the Court below in the said case vide order dated 23.01.2023 and was diligently attending all the hearings before the Court below. Learned counsel has further submitted that the petitioner has consistently appeared on all the prior dates and there is no indication of any evasive conduct on his part. In these circumstances, the Court ought to first attempt to secure the presence of the petitioner by issuing bailable warrants in the event of a single default rather than immediately resorting to non-bailable warrants. Learned counsel has further submitted that the petitioner was unable to appear before the Court below on

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25.03.2025 on account of noting of wrong date of hearing as 04.04.2025 and hence led to the cancellation of his bail and issuance of non-bailable warrants of arrest vide the impugned order. Learned counsel has submitted that despite the absence of the petitioner being unintentional and owing solely to the circumstances beyond his control, the learned Court below, without considering the inadvertence, erroneously cancelled the bail bonds and surety bonds of the petitioner. Consequently, warrants of arrest were issued against the petitioner vide impugned order i.e. 25.03.2025. Learned counsel has urged that the non-appearance of the petitioner before the Court below was neither deliberate nor intentional but purely circumstantial. Learned counsel asserts that the petitioner has no intention to evade the proceedings and undertakes to be present before the Court below on all future dates of hearing without fail. According to learned counsel, the issuance of non-bailable warrants was harsh, disproportionate and contrary to the principles governing judicial discretion, particularly when the petitioner's absence was purely inadvertent. Learned counsel has further contended that the procedure adopted by the learned Court below in directly issuing the non-bailable warrants against the petitioner 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 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 Court



below as also join the proceedings in accordance with law for an expeditious culmination of the trial.

3. Keeping in view the nature of the matter especially the factum of the case in hand arising out of the criminal complaint filed under Section 138 of the Negotiable Instruments Act, 1881, this Court does not deem it appropriate to call upon the respondents at this stage.

4. I have heard learned counsel for the petitioner and have perused the available record.

5. 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."*

5.1. 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."*

5.2. 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.”

6. A perusal of the record reveals that the petitioner, after the grant of bail, was regularly appearing before the Court below. However, on 25.03.2025, the petitioner inadvertently failed to appear before the Court below on account of noting of wrong date of hearing. However, the learned trial Court, straight away proceeded to issue non-bailable warrants against the petitioner. In the considered opinion of this Court, this 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 must be adopted sparingly and only upon recording cogent reasons that reflect the necessity of such a stringent course.

7. 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 petitioner-accused having come forward himself to face trial, willingness shown by the petitioner-accused to appear before the trial Court on each and every date in accordance with law, the petitioner having submitted that he shall cooperate for an expeditious culmination of the trial & there being no tangible material brought forward to indicate the likelihood of the petitioner to interfere with the prosecution evidence; this Court is the considered opinion that the petition in hand deserves to be allowed.



8. It is, thus, directed as follows:
- (i) The impugned order dated 25.03.2025 (Annexure P-2) passed by the learned Court below is set-aside subject to the petitioner appearing before the trial/concerned Court on 17.05.2025 i.e. the next date of hearing fixed in the said Court & shall furnish an undertaking that the petitioner shall continue to appear before the trial/concerned Court on each and every date of hearing. Apart from the aforesaid condition(s), the petitioner shall also surrender his passport, if any, before the trial/concerned Court. It is clarified that the trial/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.5,000/- 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 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

April 29, 2025
Ajay

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