

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

2025:PHHC:108723



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CRM-M-44973-2025

Date of decision: 20.08.2025

Raj Kumar

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Jaskirat Singh Dhaliwal, 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 28.05.2025 (Annexure P-4) passed by learned Additional Sessions Judge, Sri Muktsar Sahib vide which the petitioner was ordered to be summoned through non-bailable warrants and order dated 17.07.2025 (Annexure P-6) vide which proclamation was ordered to be issued against him in case pertaining to FIR No.46 dated 16.03.2025 under Sections 21(b), 27, 29 of NDPS Act, 1985 registered at Police Station City Muktsar, District Sri Muktsar Sahib.

2. Learned counsel for the petitioner has argued that the petitioner had earlier been granted the concession of bail by the concerned Court vide order dated 09.04.2025 (Annexure P-2). Learned counsel has further submitted that the petitioner had engaged the counsel before the Sessions Court only for securing regular bail and not for contesting the trial. Learned counsel has further submitted that the challan had not yet been presented, but on 20.05.2025 the challan was presented in the absence of the petitioner and case was adjourned to 28.05.2025. Learned counsel for the petitioner has further submitted that the Investigating Officer did not inform the next date of

hearing fixed in the matter to the petitioner. Learned counsel for the petitioner has further argued that due to the abovesaid reason, the petitioner could not appear before the trial Court. Learned counsel has further iterated that due to his non-appearance the trial Court has summoned him through non-bailable warrants of arrest for 17.07.2025, while cancelling his bail orders and subsequently on 17.07.2025 proclamation qua the petitioner was also ordered to be issued. Learned counsel has iterated that the non-appearance of the petitioner before the trial Court was not willful and intentional but on account of no information about the date fixed in his case. Learned counsel has contended that the procedure adopted by the learned trial Court in directly issuing the non-bailable warrants and 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 trial Court as also join the proceedings in accordance with law, the petitioner shall appear before the trial Court on each and every date of hearing and also cooperate therein, in accordance with law for an expeditious culmination of the trial.

3. Notice of motion.

4. Mr. Gurpartap S. Bhullar, AAG, Punjab accepts notice on behalf of the respondent-State. He has opposed the petition in hand by arguing that

the petitioner has misused the concession of bail earlier extended to him by not appearing before the trial 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. 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 the learned trial Court, while cancelling the concession of bail, straight away proceeded to issue non-bailable warrants against the petitioner. In the considered opinion of this Court, the cancellation of bail orders 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 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 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.

9. It is, thus, directed as follows:

(i) The impugned orders dated 28.05.2025 (Annexure P-4) and 17.07.2025 (Annexure P-6) passed by learned Additional Sessions Judge, Sri Muktsar Sahib are set-aside subject to the petitioner appearing before the trial/concerned Court on or before 22.08.2025 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. 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 High Court Lawyers Welfare Fund (Account No.65018692589, IFSC Code: SBIN0050306, Branch Code: 50306, Bank: State Bank of India, High Court Branch, Chandigarh). 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

August 20, 2025

Naveen

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No