



1

MCRC-19865-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

ON THE 8th OF MAY, 2025

MISC. CRIMINAL CASE No. 19865 of 2025

NILESH GARG

Versus

THE STATE OF MADHYA PRADESH

.....
Appearance:

Shri Divyansh Goyal- advocate for the petitioner.

Shri Vishal Panwar appearing on behalf of Advocate General.

.....
ORDER

1. The petitioner has filed the present petition under Section 528 of BNSS r/w Section 529 of BNSS being aggrieved by the order dated 14.04.2025 passed by learned Additional Session Judge, Neemuch whereby the non-bailable warrant of arrest was issued. Being aggrieved the said order, the petitioner has filed an application under Section 70(2) of Cr.P.C and the learned Additional Sessions Court has dismissed the said application vide order dated 24.04.2025, hence, the present petition before this Court.

2. Learned counsel for the petitioner submits that the petitioner was granted bail by this Court vide order dated 09.09.2024 passed in MCRC No.36330/2024 and in pursuant to that said order, the petitioner was marking his presence before the trial Court continuously. The petitioner used to attend all the hearings, but on 02.04.2025, neither he could appear nor his advocate before the learned trial Court due to prevailing strike by the Bar Association



and could not receive any information regarding next date of hearing also. In support of this submission regarding strike of Bar Association, and affidavit and paper cuttings have also placed before this Court. Thereafter, on 12.04.2025, the learned trial Court has issued non-bailable warrant against the petitioner. The petitioner, immediately filed an application under Section 70(2) of Cr.P.C seeking cancellation of the warrant by explaining his bona fide, but the learned trial Court has rejected his application vide order dated 24.04.2025. Hence, the present petition for setting aside the impugned order dated 24.04.2025 and recalling of the non-bailable warrant dated 12.04.2025.

3. In support of his contention, counsel for the petitioner has placed reliance over the judgment of this Court dated 21.03.2017 passed in the case of **Sachin Gupta, vs. State of Madhya Pradesh** in MCRC No.4417/2017.

4. On the other hand, counsel for the State has opposed the prayer, but fairly admitted the factum of ongoing strike of Bar Association on the respective date.

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

6. The Co-ordinate Bench of this Court, in the case of **Sachin Gupta (supra)** has held as under:-

"In cases like the present one where an accused person, who is on bail and has failed to appear before the trial Court on the date of hearing, the trial Court is well within its right to issue a non-bailable warrant and he same cannot be faulted. However, It is advisable that the said power be not exercised in a routine or mechanical manner. In such a situation, it will be in the larger interest of justice to examine if the presence of the accused could be secured for the next date by way of bailable warrant instead, at the first instance. The option to resort to either is within the discretion of the trial



Court which it must exercise in the facts and circumstances of each case. If an application for cancellation of the non-bailable warrant is filed before the Court issuing it, it cannot be dismissed only on the ground that the physical presence of the accused is essential as the same is not necessary under Section 70(2) of Cr.P.C. as already stated hereinabove.

7. In view of the aforesaid observations, the Court has allowed the petition by setting aside the impugned order. Further, The Co-ordinate Bench of this Court has further endorsed the said Judgement of Sachin Gupta (Supra) in the case of **Hindustan Coca Cola Beverages Pvt. Ltd A Private Limited Company Registered Under the Provisions vs. The State of Madhya Pradesh** decided on 11.08.2017 passed in MCRC No.1305/2017.

8. On this aspect, the attention of this Court has also been drawn towards the recent judgment of Hon'ble Apex Court passed in the case of **Krishna Sharma Alias Krishna Kumar Sharma vs. The State of West Bengal And Anr. in SLP (Cri.) No.12829/2023** decided on 24.01.2024 wherein the Hon'ble Apex Court in para nos.3 to 5 has held as under:-

3. Learned counsel appearing fro the appellant submits that the appellant could not attend the Court on the said date and there was traffic jam due to VIP movements. He further submits that the lawyer of the appellant also could not remain present as his Vakalatnama was withdrawn on an earlier day.

4. Learned counsel for the respondent/State and the learned counsel for the complainant oppose the



petition.

5. However, we find that merely because the appellant did not appear personally could not have been a ground for cancellation of bail. The Parameters for grant of bail and cancellation of bail are totally different. The bail already granted may be cancelled, if it is found that the person who has been granted the benefit of bail has violated any of the conditions or misused the liberty by influencing the witnesses or tempering with evidence.

9. Although, the aforesaid judgment of Hon'ble Apex Court is with regard to an appeal, but guidance can be taken from the same and therefore, the bail already granted may be cancelled, if it is found that the person who has been granted the benefit of bail has violated any of the conditions or misused the liberty by influencing the witnesses or tempering with evidence.

10. In the case at hand, the facts and circumstances are similar. Therefore, in view of the settled provisions of law as well as considering the findings of this Court in the case of **Krishna Sharma Alias Krishna Kumar Sharma (supra)** and **Sachin Gupta (Supra)** as well as the factum of the ongoing strike in concerned Bar Association, the impugned orders dated 12.04.2025 and 24.04.2025 stand set aside. The Petition is allowed consequently. The bail bond of the petitioner stands restored and the petitioner is directed to mark his presence on the next date of hearing before



the trial Court as well as on all subsequent dates.

11. With the aforesaid, the petition stands disposed off.

12. A copy of this order be sent to the concerned trial Court by the registry for information.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

amit