

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

CRM-M-34857-2015

Date of Decision: January 08, 2016

Bharat Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Deepak Goyal, Advocate,
for the petitioner.

Ms. Simsi Dhir Malhotra, DAG, Punjab.

.....

***1. Whether Reporters of local papers may be
allowed to see the judgment?***

2. To be referred to the Reporters or not?

***3. Whether the judgment should be reported in the
Digest?***

NARESH KUMAR SANGHI, J.(Oral)

Challenge in this petition filed under Section 482,
Cr.P.C., is to the order, dated 28.05.2015 (Annexure P-1), passed
by learned Additional Sessions Judge, Special Court, Sangrur, in
case FIR No. 85, dated 23.08.2013, registered at Police Station,

City Ahmedgarh, District Sangrur, whereby the opportunity of cross-examination of Sub Inspector Majid Khan (PW-5) and Head Constable Major Singh (PW-6) was not afforded to the petitioner, who was facing trial for the offence punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity the NDPS Act).

Learned counsel for the petitioner contends that since the lawyer of the petitioner was not present in the Court, therefore, learned Trial Court has wrongly declined the opportunity to the petitioner to cross-examine Sub Inspector Majid Khan (PW-5) and Head Constable Major Singh (PW-6).

After hearing learned counsel for the parties, this Court is of the considered opinion that the petitioner is facing trial in a serious offence punishable under Section 22 of NDPS Act. The non cross-examination of Sub Inspector Majid Khan (PW-5) and Head Constable Major Singh (PW-6) would lead to serious consequences against the petitioner.

It is not in dispute that if the defence lawyer does not appear for cross-examination of the prosecution witnesses, then in that eventuality, the Courts are constrained to take a harsh

view, but it all depends on the facts of each case. In the present case, the non cross-examination of the material witnesses may lead to serious prejudice to the petitioner.

In view of the totality of the facts and circumstances of the case, the order, dated 28.05.2015, declining the opportunity to the petitioner to cross-examine Sub Inspector Majid Khan (PW-5) and Head Constable Major Singh (PW-6) is set aside. It is directed that learned Trial Court shall afford one effective opportunity to the petitioner or his counsel to cross-examine the said witnesses. It is made clear that if the petitioner or his counsel under the garb of the present order unnecessarily delays the trial, then learned Trial Court shall proceed with the trial from the stage on which the case is pending.

Disposed of.

January 08, 2016
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(NARESH KUMAR SANGHI)
JUDGE