

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

**CRM-M-4303 of 2021 (O & M)
Date of Decision:-06.12.2021**

Anthony @ Sabhi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present:- Mr. Chandan Singh Rana, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

(Proceedings conducted through Video Conferencing)

SURESHWAR THAKUR J.(Oral)

The petitioner is facing trial for commission of offence carried in FIR No.89 dated 27.5.2018, registered at Police Station Sadar, Jalandhar, District Jalandhar, therein offences constituted under Sections 21/22 of NDPS Act are recorded.

Though the accused-petitioner was represented by his defence counsel, and, through his counsel he sought his exemption from personal appearance, before the learned trial Magistrate concerned. The expoused extension was granted to him by the learned Magistrate concerned through an order made, on 10.12.2019. However, the exemption (supra) from

personal appearance as granted to the petitioner was only for a day. The reason(s) for granting exemption from personal appearance to the petitioner-accused, was owing to the fact, that the petitioner was then in custody.

However, on 28.1.2020 the accused, did not record, his personal appearance before the learned trial Magistrate nor he sought his exemption from personal appearance before him. Consequently, the learned trial Magistrate after cancellation of his bail bonds, launched proceedings under Section 446 Cr.P.C., against the petitioner, and, his surety. The afore made order becomes challenged before this Court. The impugned order is vitiated with a vice of infirmity, as the learned trial Magistrate, without verifying from the Assistant Public Prosecutor concerned, whether the petitioner was in judicial custody on the day of making of the impugned order, as he was earlier on 10.12.2019, has yet proceeded to, without his earlier issuingailable warrants, and, thereafter upon non-execution thereof, his issuing non-ailable warrants, and, on failure of execution thereof, upon the petitioner, his drawing satisfaction about the petitioner wilfully absenting to appear before him, rather make the impugned order. Consequently, the impugned order is rendered in a slip shod manner, and, in a post haste manner.

Be that as it may, since a perusal of Annexure P-5, which is an order hence releasing the petitioner on bail, reveals that it has been made, on 19.5.2020, and, rather subsequent to the passing of the impugned order. Therefore, when the petitioner was in custody at the time of passing of the impugned order, thereupon the trial Court concerned has compounded its

arbitrariness, as evident, in its proceeding to make the impugned order. In sequel, the impugned order is set aside. As assured by learned counsel for the petitioner, the latter is directed to record his personal appearance, before the learned trial Court concerned within one week from today.

December 06, 2021
Vijay Asija

(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No