

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

**CRM-M No. 44914 of 2021 (O&M)
Date of Decision: 28.10.2021**

Rashwinder Singh @ Raswinder Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Randeep Singh Waraich, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab

[Through Video Conferencing]

SURESHWAR THAKUR, J. (ORAL)

FIR No. 144, dated 16.12.2020 constituting offences under Sections 15, 61, 85 of the NDPS Act, is registered against the accused - petitioner at police station Bhadson, District Patiala.

The accused in the afore FIR, was arrested, for holding conscious, and, exclusive possession of poppy husk, weighing an intermediate quantity. The bail applicant had made an application under Section 439 Cr.P.C. before the Court of learned Additional Sessions Judge concerned. The learned Additional Sessions Judge, through his order of 07.01.2021, allowed the bail applicant's application, for his being released on bail.

Though, the bail applicant furnished personal and surety bonds before the learned Illaqa Magistrate concerned. However, he did not abide with the conditions mentioned in the order of the learned Additional

Sessions Judge, inasmuch as did not cause his personal appearance, before

the learned trial Judge concerned, nor he, during the pendency of trial of the afore case, got an affirmative order on his application seeking exemption from personal appearance. Consequently, the learned trial Court, through an order dated 20.09.2021 (Annexure P-4), proceeded to cancel his personal and surety bonds

Also, through the afore order, the order of bail (supra) of accused became cancelled. Even though for the non-appearance of the bail applicant before the learned trial Judge, especially when no affirmative order was made on his application, seeking exemption from his personal appearance, before the learned trial Judge, the learned trial Judge concerned, hence, proceeded to draw the proceedings under Section 446 Cr.P.C. against the bail applicant as well as the surety. However, the afore was done, without any application being moved before the learned trial Judge, by the State, hence, seeking cancellation of the bail, granted earlier to him through order (supra), nor the learned trial Judge could proceed to suo moto cancel the bail, moreso, without issuing a show cause notice to the bail applicant. Even otherwise prior thereto, the presence of the accused could well have been procured byailable warrants, and, or non-ailable warrants.

Consequently the cancellation of bail, granted to accused-petitioner by the learned Special Judge vide order dated 20.09.2021 (P-4), is legally frail in the eyes of law, hence the present petition is allowed.

Moreover, even if the accused-bail applicant, did not cause his personal appearance before the trial Court, and even if he, for his non-appearance, without any application for exemption, from his personal appearance being filed before the learned trial Judge, nor also when no

affirmative order became pronounced thereon, yet when a valid explication is meted in the extant application, for his non-appearance before the learned trial Judge. Therefore, the impugned order is set aside, and, the proceedings drawn under Section 446 Cr.P.C. against the bail applicant, as well as against the surety are also annulled. In sequel the order of bail dated 07.01.2021 is revived.

A copy of this order be given dasti on payment of usual charges.

October 28, 2021

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**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>