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

CRM-M-45851-2021 (O&M)

Date of decision:02.11.2021

MANJEET KAUR @ KALI

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr.Rajiv Verma, Advocate
for the petitioner.

Mr.Tanuj Sharma, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

The petitioner herein, is an accused in FIR No.279 dated 24.03.2013 lodged at Police Station City Panipat, District Panipat, constituting therein offences under Sections 420, 120-B of IPC. Since the petitioner had failed to record her appearance before the learned trial Magistrate, therefore, the learned trial Magistrate proceeded to issue warrants of arrest upon her. However, the afore made warrants of arrest remained unexecuted upon the petitioner, therefore, the learned Magistrate concerned through an order made on 28.04.2017, proceeded to draw proceedings under Section 446 of Cr.P.C. against the petitioner and her sureties. Furthermore, the learned Magistrate concerned re-issued warrants of arrest against the petitioner and other co-accused.

However, on 25.01.2018 the learned Magistrate concerned, proceeded to, on failure of the executing officer to execute the warrants of arrest upon the bail petitioner, made an order declaring her to be a proclaimed offender. However, in respect of other co-accused the learned Magistrate proceeded to direct the case concerned, to be listed for recording of prosecution evidence.

The afore order is challenged before this Court.

The co-accused alongwith the petitioner, as unfolded by Annexure P-1, is namely one Ravinder alias Raju, and, he is acquitted of the charge concerned. Obviously, the petitioner herein failed to record her appearance, before the learned Magistrate concerned, and, therefore she became declared a proclaimed offender, (through the impugned orders).

Subsequent to the afore impugned order of 28.04.2017, the petitioner had made a motion before this Court for hers being released on regular bail. The afore made motion resulted in an affirmative order being pronounced, thereon, on 23.05.2017, vis-a-vis the petitioner herein.

However, she is required to surrender before the learned trial Magistrate to enable the latter to recourse the mandate of Section 299 of the Cr.P.C.

Mr.Tanuj Sharma, AAG, Haryana, appearing on behalf of State, has vehemently contended, that since from 23.05.2017 and uptill now, the petitioner has failed to surrender before the learned trial Magistrate concerned, and, has forestalled the re-coursing by him of the mandate of Section 299 Cr.P.C., and/or has obviously willfully absented from joining the proceedings. Therefore, he argues that the petitioner *dehors* the order made on 23.05.2017, hence also does not deserve any leniency nor her liberty is to be protected.

However, the afore made submissions does not find any favour with this Court, as there is an averment on affidavit of the petitioner, that only on account of the petitioner being lodged in judicial custody, in contemporaneity with the impugned order being made, that she was unable to, appear before the executing officer, despite non-bailable warrants, as became issued upon her by the learned trial Magistrate concerned. It appears that the neither the arresting

officer nor the APP concerned, and, besides the learned trial Judicial Magistrate concerned did not deem it fit and proper to after receiving, a report from the executing officer concerned, determine the factum whether the latter had, after deployment of all the resources available with her/him, had thought fit, that the failure of execution of non-bailable warrants upon the petitioner, were a sequel of hers being lodged in custody. The afore failures have obviously resulted in the vitiated impugned order being passed by the learned trial Magistrate. Therefore, it deserves interference, and, is quashed and set aside.

Since the petitioner has engaged the services of a learned counsel, and, who, assures this Court that the petitioner shall surrender before, and, record her personal appearance before the learned trial Magistrate, as and when ordered to do so, unless an affirmative order for dispensing with her personal appearance, is made, on her application. Therefore, in view of the afore assurance meted to, this Court by the counsel for the petitioner, it quashes Annexure P-2, and, also directs the petitioner to make her surrender before the learned trial Magistrate within two weeks thereafter. However, the afore is subject to upon her surrendering before the learned trial Magistrate, she shall ensure that she furnishes personal surety bonds in the sum of Rs.50,000/- each to his satisfaction.

Subsequently thereto, the learned trial Magistrate is directed to recourse, the mandate of Section 299 of the Cr.P.C.

Disposed of.

(SURESHWAR THAKUR)
JUDGE

02.11.2021

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Whether speaking/reasoned:-

Yes/No