

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 334 of 2022
Date of Decision: 22.2.2022

Sunny @ Guri @ Gurchain Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

(Through video conferencing)

1. The petitioner is facing trial before the learned Additional Sessions Judge, Karnal, in respect of FIR No. 243 dated 23.7.2016, constituting therein offences under Section 15/61/85 of the NDPS Act, 1985. The FIR (supra) is registered at Police Station Madhuban, Karnal.

2. The accused-petitioner had engaged a defence counsel for defending him in the apposite trial. On 21.9.2021, the trial with respect to the FIR (supra) had reached, and, progressed upto the stage of adduction of defence evidence of the accused-petitioner. However, on the afore date, the defence evidence was not present. Moreover, the accused-petitioner herein Sunny @ Guri @ Gurchain Singh was also not present. When the matter was taken up post lunch, then also the petitioner herein, remained absent from the proceedings drawn by the learned Additional Sessions Judge, Karnal. Moreover, nor the counsel, engaged by the petitioner, put any

appearance on his behalf, before the learned Additional Sessions Judge concerned. At 4.00 P.M., on 21.9.2021, the learned Additional Sessions Judge concerned, proceeded to order for cancellation of the personal, and, surety bonds, as became furnished by the petitioner, besides ordered for theirs being forfeited to the State of Haryana. Moreover, the learned Additional Sessions Judge concerned, made an order for issuance, and, execution of warrants of arrest against the accused-petitioner.

3. The afore made order is challenged by the petitioner. The most conspicuous reason which prevails upon this Court to set aside the impugned order, is grooved in the factum, that on 21.9.2021, when the trial became listed for adduction of defence evidence, upon, the charges drawn against the accused, no defence witness was present. Consequently, there was no further stalling of the trial, entered upon, by the learned Additional Sessions Judge concerned, against the accused concerned, merely on account of, neither the counsel for the petitioner, nor the petitioner making their respective personal appearances, before the learned Additional Sessions Judge concerned. Since when only for the absence of the accused, and, of his defence counsel on 21.9.2021, and, that too without any valid exemption, despite the defence witnesses, being present before the learned ASJ concerned, and, their testifications becoming rather for their respective non appearances, hence not amenable to become recorded by the learned ASJ concerned, besides the trial entered upon the charges concerned, by the learned ASJ concerned, becoming impeded, thereupon the learned ASJ concerned, could draw a valid conclusion, that the respective absences on the afore date, of the petitioner-accused, and, of his counsel, were intentional, and, deliberate. Moreover, he could also make the impugned

order. However, since for the afore reasons, the trial could not be construed to be either impeded or halted, merely for the non-appearances on the relevant date of the accused or his counsel. Therefore, the more appropriate procedure to be adopted by the learned ASJ concerned, became comprised in his issuing fresh summons upon the defence witnesses concerned, and, if on the listed date, the defence witnesses, did turn up, whereas, the petitioner-accused, and, his validly engaged counsel did not turn up, for no valid reasons, thereupon, the learned ASJ concerned, could conclude that the respective apposite absences were willful, and, also could proceed to conclude that the afore, is impeding the progress of the trial, as entered upon qua the charges drawn against the accused. Furthermore, the learned ASJ concerned, could also proceed to hence cancel the personal, and, surety bonds, as furnished by the petitioner-accused, and, his sureties, besides could also validly proceed to forfeit them to the State of Haryana.

4. Significantly, the afore recourse remained unadopted by the learned ASJ concerned. Therefore, for the afore stated reasons, the trial entered upon by the learned ASJ concerned, qua the charges concerned, could not be construed to be halted. In sequel, the order impugned before this Court is unmeritworthy, and, is quashed, and, set aside.

5. Be that as it may, Mr. Tanuj Sharma, appearing on behalf of the State of Haryana, and, also the learned counsel for the petitioner submit, that in pursuance to the order made by this Court on 07.1.2022, the petitioner has surrendered before the learned trial Court concerned, and, has furnished fresh personal, and, surety bonds to the satisfaction of the learned trial Court concerned. However, since for all the afore stated reasons, the respective estates of the accused-petitioner herein, and, all his sureties

would become encumbered with the liability, as may ultimately arise upon proceedings drawn under Section 446 Cr.P.C., becoming culminated, inasmuch as, their respective estates would face the ill-consequences of the amounts carried respectively in the personal, and, surety bonds rather becoming amenable to be recovered as arrears of land revenue. Therefore, the afore ill-consequences are required to be undone, inasmuch as, the learned ASJ concerned, is directed to return the fresh personal, and, surety bonds as became furnished before him, in pursuance to the order made by this Court, on 07.1.2022.

6. Disposed of.

(SURESHWAR THAKUR)
JUDGE

February 22, 2022
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes/No