

104

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

CRM-M-1926-2022 (O&M)

Date of decision:17.01.2022

KINDERBIR SINGH ALIAS SUNNY DAYAL

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. This Court through an order made on 23.02.2018, upon CRM-M-6405-2018 had, through the imposing of the hereinafter extracted condition(s), upon bail applicant, proceeded to accord the indulgence, as became claimed by the bail petitioner.

“(a) The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.

(b) In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.

(c) He shall not leave the country without the previous permission of the court.”

2. Since condition No.(b) as becomes extracted hereinabove, imposed a pre-emptory injunction upon the bail applicant, to record his regular personal

appearance before the learned trial Court concerned, and, upon his failing to do so, liberty was granted to the learned trial Court concerned, to proceed to cancel his personal and surety bonds, and, also thereafter, to proceed to procure his presence in accordance with law besides carries a direction, upon bail applicant to thereupon(s) re-apply for bail. Therefore, since in purported disobedience, to the aforemade injunction, upon the bail applicant, he omitted to record his personal appearance before the learned trial Court concerned, on 03.11.2021, and, that too, without his moving an application through his counsel, for his securing for valid, and, tangible reason(s), his exemption from personal appearance, before the learned trial Court concerned. Consequently, the learned trial Court proceeded to mete compliance with the aforemade direction, and, hence ordered for cancellation of his personal and surety bonds, and, also ordered for his presence being procured through NBWs.

3. The aforemade order is challenged before this Court, and, also the bail applicant, carves for a further indulgence qua his personal liberty being protected, through a direction being made against the serving official concerned, to not execute the NBW concerned, upon, him.

4. Even though, *prima-facie* the challenge to the aforemade impugned order, and, the claim for protection of personal liberty of the bail applicant, through a direction being meted, upon the serving official concerned, to not execute the NBWs, are not validly projecteds pleas before this Court. However, since the bail applicant has sworn an affidavit, that he was under a *bonafide* impression that, on 03.11.2021 there was restricted functioning of the learned trial Courts concerned. Therefore, since the *bonafide* impression may have compelled the bail applicant, to not record his personal appearance, on the afore day, before the learned trial Court concerned.

5. Consequently, his personal liberty is to be protected, and, the serving official concerned, is directed not to execute the NBWs, upon, the bail applicant. Moreover, the impugned order drawn on 03.11.2021 is also quashed, and, set aside.

6. The bail applicant, is hence forth directed to record his personal appearance before the learned trial Court concerned, and, only when for valid reasons he is unable to record his personal appearances, he may claim his exemption from personal appearance, through an apposite application being filed before the learned trial Court concerned, and, only if an affirmative order, is made thereons, by the learned trial Court concerned, thereupon alone the bail applicant may choose to not record his personal appearance before the learned trial Court concerned, otherwise not.

15. Disposed of.

16. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

17.01.2022

ithlesh

Whether speaking/reasoned:-	Yes/No
<i>Whether reportable:</i>	<i>Yes/No</i>