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

CRM-M-3321-2022 (O&M)

Date of decision:27.01.2022

JAGDISH CHANDER KAUSHIK

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Rajnish K. Gupta, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner filed an application, under Section 438 Cr.P.C. before the learned Sessions Judge, Panchkula. The afore application was in pursuance of FIR No.04 of 08.09.2009, constituting therein offences under Sections 409, 420, 120-B of IPC, becoming registered against the bail applicant, and, other co-accused, at Police Station State Vigilance Bureau, Panchkula.

2. The above bail applicant application alongwith connected therewith the bail applications of other co-accused, became allowed by the learned Sessions Judge, Panchkula, through his making the hereinafter extracted order, as carried in paragraph No.8 thereof.

“8. For the foregoing reasons and without commenting on the merits of the case, I hereby accept both the bail applications and order that in the event of their arrest, petitioners Jagdish Chander Kaushik and Rajesh Kumar would be released on bail by the arresting officer on their furnishing bail bonds in the sum of Rs. 50,000/- each with one surety each in the like amount to his satisfaction.

However, both the petitioners would join investigation as, and, when required by the police. They would also abide by other conditions laid down in Section 438 Cr.P.C. Copy of this order be placed in the file of bail application No.191 of 2009 titled 'Rajesh Kumar Vs. State of Haryana'. File be consigned to the records.”

3. A reading of the above made order, discloses that the learned Sessions Judge concerned, had imposed upon the bail applicant, the conditions as carried in sub-section 2 of Section 438 of the Cr.P.C. A reading of the above statutory condition, discloses that no statutory requirement is imposable, upon, any bail applicant to, after the facility of anticipatory bail being granted to him, to record his personal appearance, before the learned trial Court concerned. Even though, the afore condition is not expressly carried in the provisions, as, cast under sub-section 2 of the Section 438 of the Cr.P.C. yet, through the mandate of Clause 4 of sub-section 2, provisions whereof stands extracted hereinafter.

“(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.”

4. The Court concerned, may even impose the afore condition, upon the bail applicant concerned. In determining whether the above condition become imposed, upon the bail applicant, by the learned Sessions Judge, Panchkula, it is necessary to refer to the above extracted order as made by him, on 24.09.2009. A reading of the above extracted order, discloses that there was no imposition of any condition, upon the bail applicant, to record his personal appearance before the learned trial Judge concerned.

5. Consequently, the learned trial Judge concerned, could not have proceeded to make an order for cancellation of bail, as, became granted to the

bail applicant, merely for his purportedly breaching the afore condition. Even otherwise, even if the afore condition became purportedly breached, and, even if assumingly the prosecution or the learned Court concerned, deemed it fit to initiate coercive measures against the petitioner, for ensuring his personal appearance before the learned Court concerned. Nonetheless even the jurisdiction for making an order for initiation of coercive process, against the bail applicant, remained solitary vested only in the Court granting the bail i.e. the Court of Sessions Judge, Panchkula, and, not in the committal Court concerned, and, that too only after the completest compliance being meted to the principles of natural justice.

6. The learned State counsel, as also learned counsel for the petitioner, both fairly submit that the report of the investigating officer under Section 173 Cr.P.C., is filed before the learned Magistrate, and, is yet under consideration before the learned Judicial Magistrate concerned, and, that no charge has been framed against the accused. Also they make a conjoint submission before this Court, that the learned Court concerned, is in the process of ensuring the respective presences of the co-accused before it, through issuance of summons, upon all accused concerned. It is in the above context that the learned Judicial Magistrate concerned, had issued process for ensuring the personal appearance of the petitioner before him, for thereafter, his proceeding to draw a charge against the accused as well as other co-accused.

7. It is clearly discernible from the orders appended with the petition, that the summons as become issued, upon the petitioner for his recording his personal appearance before the learned Judicial Magistrate concerned, did not result in theirs becoming validly executed or served upon him. The learned Judicial Magistrate concerned, without awaiting for valid service, being

effected, upon accused has rather in a hot haste, and, in a slipshod manner, and, obviously without application of mind, hence proceeded to order for initiation of coercive process against the petitioner. The above has resulted in the untenable curtailment, and, fettering of the personal liberty of the petitioner.

8. The afore is required to be undone. Consequently, the instant petition is allowed, and, the impugned order of 07.10.2021 is quashed, and, set aside. The executing agency is directed to not execute the NBWs. The NBWs if not issued, be not issued against the petitioner.

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

10. Dasti copy.

(SURESHWAR THAKUR)
JUDGE

27.01.2022

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