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

CRM-M-3320-2022 (O&M)

Date of decision: 27.01.2022

GURPEET SINGH AND ANR.

...Petitioners

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Inderpreet Singh Kooner, Advocate
for the petitioners.

Mr. Bhupender Beniwal, AAG, Punjab.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. FIR No. 9 of 16.01.2020, lodged at Police Station Shambu, District Patiala, constituted therein an offence under Section 21 of NDPS Act.
2. The petitioners were, on their petition filed under Section 439 Cr.P.C., granted bail by the learned Special Judge, Patiala. The bail condition(s) as imposed upon the petitioners, through an order made on 18.02.2020, was of theirs ensuring their personal appearances before the learned Special Judge concerned, on each, and, every date of hearing.
3. The learned counsel for the petitioners submits, that the latter have engaged a counsel to defend themselves against the charges, as put to them, by the learned Special Judge concerned. However, today the attention of this Court, is drawn to an order made on 07.10.2021, order whereof becomes extracted hereinafter.

“Three witnesses are served for today. Two witnesses have come present, but they are discharged for the time being as both the accused are absent. Case called many times since morning. As

such bail orders of both the accused stand cancelled. Their bail bonds and surety bonds are also forfeited to the State. Both of them be brought through warrants of arrest for 9.12.2021. Notice to their sureties be also issued for the date fixed.”

4. The order made in consequence thereof, hence on 09.12.2021, also becomes extracted hereinafter.

“Warrants of arrest of both the accused received back unexecuted. Fresh be again issued for 16.2.2022. Notice issued to surety Gurcharan Singh received back unserved. Fresh notice to him be again issued for that date. Notice issued to surety Malkiat Singh received back with the report that he had been died. Copy of his death certificate is also attached with the report. So warrant of attachment against the property of said surety as mentioned in the surety bonds furnished by him, be issued for the date fixed.”

5. Though, from a reading of the aforemade order, it is apparent that there is breach of the bail condition(s) imposed by the learned trial Court concerned, upon the bail petitioners, and, as appertaining to their ensuring their making their personal appearances before the learned Special Judge concerned, on each, and, every date of hearing. However, even if the afore condition, did become breached, thereupon it was incumbent, upon the learned Special Judge concerned, to issue notice to them, and, also ensure their participation in the relevant proceedings, imperatively before his ordering for cancellation, and, forfeiting of personal, and, surety bonds of the bail petitioners, and, for his thereafter ordering for issuance of warrants of arrest against the petitioners. However, in evident breach of the salient norm of natural justice, inasmuch as prior thereto, an opportunity of personal hearing becoming afforded to the petitioners, rather the learned Magistrate concerned, has taken the extreme step of untenably interfering with the personal liberty of the petitioners.

6. Since, apparently the afore salient norm(s) has become breached. Therefore, the above made order(s) does not stand the scrutiny of law, and, it is required to be quashed and set aside.

7. Even otherwise, since the petitioners were represented by defence counsel, and, if on 07.10.2021 the prosecution witnesses concerned, could not, for want of personal appearance(s) of the petitioners, before the learned Special Judge concerned, or for want of personal appearance(s) of the learned defence counsel, hence come to be cross-examined, and, obviously when there was need for further postponement of the examination(s) of the prosecution witnesses concerned. Therefore, in the above event also, precisely when the petitioners were represented by defence counsel, it became rather sagacious for the learned Special Judge concerned, to issue notice to the learned defence counsel, rather to elicit from him, the reason for his not appearing on 07.10.2021, and, hence his taking omit to cross-examine the prosecution witnesses, and, if a valid explanation became meted by him, thereupon the learned Special Judge concerned, may then have proceeded to, in the alternative pass orders, to only postpone or defer the cross-examination(s) of the prosecution witnesses concerned. Since only for the purpose of able, and, an efficacious cross-examination rather being conducted, upon the prosecution witnesses concerned, by the learned defence counsel, the presence before the learned Special Judge concerned, hence of the accused is required, unless validly exempted. Therefore, the learned Special Judge concerned, may have taken to record the deposition in the examinations-in-chief of the prosecution witnesses, and, to order for theirs re-stepping into the witness box, for theirs being cross-examined, rather than his ordering for the discharging of the prosecution witnesses.

8. However, the learned Special Judge concerned, has without application of mind to the above, and, also through his interfering , and, that too for without any valid reasons, with the personal liberty of the petitioners, hence through his making an order for issuance of warrants of arrest upon them, besides his without bearing in mind, the factum that the petitioners were represented by defence counsel, and, also without his seeking any explanation, from the learned defence counsel, with respect to the reasons prevailing, upon the petitioners, for theirs not making their personal appearances before him, has proceeded to make the above extracted untenable orders. May be also hence only when notice became issued, and, also became validly served, upon, the bail petitioners, qua theirs purportedly not making their personal appearances, on 07.10.2021, it may have emerged that, certain valid forbidding grounds precluded them, from making their personal appearances before the learned Special Judge concerned. Necessarily also, issuance of warrants of arrest, prior to theirs being validly served with a notice, has led to gross injustice being done.

9. In view of the above, the instant petition is allowed, and, the impugned orders are quashed and, set aside. The learned Special Judge concerned, is directed to order the listing of Sessions Case No. 3785/2020 arising from FIR (supra) hence for the recording of the deposition(s) of the prosecution witnesses.

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

(SURESHWAR THAKUR)
JUDGE

27.01.2022

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Whether speaking/reasoned:-

Yes/No

Whether reportable:

Yes/No