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

CRM-M-5963-2022

Date of decision: 14.02.2022

AJAY TIWARI

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Gourav Goel, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner is an accused in FIR No.53 of 18.03.2020, constituting therein offences embodied under Sections 323, 294, 451, 506, 148, 149 of IPC. The FIR (supra), is registered at Police Station Jamalpur, District Ludhiana.

2. After completion of investigation into the FIR (supra), the investigating officer instituted an affirmative report under Section 173 Cr.P.C. before the learned Magistrate concerned. Consequently, the learned Magistrate concerned, proceeded to admit the petitioner to bail, however, subject to his furnishing personal, and, surety bonds in the sum of Rs.20,000/- each. Since on the above date, the accused furnished the above personal, and, surety bonds, as such, the learned Magistrate concerned, proceeded to accept, and, attest the same.

3. However, subsequently for one reason or the other the learned Magistrate concerned, deferred from entering further trial upon FIR (supra).

When on 27.10.2021, the learned Magistrate concerned, entered, upon trial, as arose from FIR (supra), though the accused was represented by one Iqbal Singh Kartar Puri. Moreover, through on the above date, the learned counsel for the accused also moved an application seeking exemption from personal appearance of the accused before the learned Magistrate concerned. However, the learned Magistrate concerned, made a conclusion, that since the accused has not recorded his personal appearance on several previous occasions. Therefore, dismissed, the exemption application, as became preferred by the accused. Moreover, the learned Magistrate concerned, also proceeded to cancel the personal, and, surety bonds, as became furnished by the accused. In addition, the learned Magistrate concerned, ordered for issuance of NBWs for procuring the presence of the accused before her. The above appears to become challenged by the petitioner, before the Court of learned Additional Sessions Judge, Ludhiana rather through an inapt mode of his preferring an application, under Section 438 Cr.P.C.. The learned Additional Sessions Judge, Ludhiana without determining the tenacity of the grounds, made in the exemption application moved by the petitioner, before the learned trial Magistrate concerned, proceeded to, on the statement of the learned counsel for the petitioner, that the latter be allowed to surrender before the learned trial Magistrate concerned, rather make a direction that in case the accused within 7 days from 20.12.2021, surrenders before the learned trial Magistrate concerned, and, moves an application for bail, thereupon it shall be decided in accordance with law, by the learned Magistrate concerned.

4. The learned Judicial Magistrate concerned, through the order made on 27.10.2021 for the reasons (supra), proceeded to issue NBW, upon the accused, and, made then returnable for 25.11.2021. Consequently, as above stated, the petitioner moved an application under Section 438 Cr.P.C., before the

learned Additional Sessions Judge, Ludhiana claiming therein the relief of anticipatory bail. Though the remedy, as available to the petitioner for seeking annulment, cancellation, and, re-calling of non-bailable warrants, as became issued, upon him, by the learned Magistrate concerned, through an order made on 27.10.2021, was through an application being preferred by the accused rather before the learned Magistrate concerned. However, the afore remedy was not resorted to by the petitioner, rather the petitioner proceeded to move an application under Section 438 Cr.P.C. The grounds, as made out in the apposite application was comprised in the factum of the absence of the accused on 27.10.2021 before the learned Magistrate concerned, being neither intentional nor deliberate. The validity of the afore ground became not considered by the learned Additional Sessions Judge, Ludhiana nor the latter either proceeded to determine the declining to the petitioner the relief, as claimed in his exemption application, as became moved through his counsel before the learned Magistrate concerned.

5. The sequel of the above mis-recoursed legal remedies, and, also the sequel of the learned additional Sessions Judge, Ludhiana rather directing the accused to surrender before the learned trial Court concerned, within 3 days, and, thereafter move an application for bail before her besides, with the further direction, that the apposite bail application would be decided within three days thereafter, is, obviously that the order cancelling personal, and, surety bonds remains yet intact. The further ill-consequence thereof, is that the accused, and, his sureties would all become amenable for proceedings under Section 446 of the Cr.P.C., being drawn against them, with the further ill-consequential effects, inasmuch as, the amounts carried in the personal as well as surety bonds, being recoverable as arrears of land revenue from the respective estates of the bail

petitioner, and, of his sureties. All the afore were necessarily required to be dealt with by the learned Additional Sessions Judge, Ludhiana, inasmuch as, is though being seized with an application under Section 438 Cr.P.C., he was to also, when in above application, the imperative ground became raised qua the absence of the accused, before the learned Magistrate concerned, on 27.10.2021 being not deliberate or intentional, rather, to *suo-motu* exercise the revisional jurisdiction, upon, the validity of the order of 27.10.2021, and, to thereafter ascertain whether there was truth, in the exemption application, as became filed by the counsel of the petitioner, before the learned Magistrate concerned. It is for the afore lack of exercising with diligence, as well as for the lack of application of keenest judicial mind, to the afore factum and effects, that the learned Additional Sessions Judge concerned, proceeded to untenably entail the afore ill-consequences, upon the estate of the petitioner, as well as upon the estate of the sureties concerned.

6. Though, there is no challenge to the order, made on 20.12.2021 by the learned Additional Sessions Judge, Ludhiana, and though there is a challenge only to the order made on 27.10.2021. Therefore, even if there is no challenge in the instant petition to the order made on 20.12.2021 by the learned Additional Sessions Judge, Ludhiana yet in the larger interest of justice, and, for all the afore stated reasons, rather for ensuring, that the estate of the bail petitioner, and, the estate of the sureties, do not become entailed with the ill-consequence, as arise from cancellation of the personal, and, surety bonds, inasmuch as, their respective estates become not encumbered to proceedings drawn under Section 446 of the Cr.P.C. Moreover, when the validity of the becoming exemption claim has not been determined either by the learned Judicial Magistrate concerned, and, rather has been in a slipshod manner

rejected by the learned Magistrate concerned, inasmuch as, merely for his not recording his personal appearance before the learned trial Magistrate concerned, on any previous occasion, and, also when relief thereon has been denied without eliciting any appropriate explanation from the counsel concerned, besides without any imperative finding qua ill effects thereof, upon, the progress of the trial. Therefore, for removing all the above legal mishaps, and, for ensuring that the liberty of the petitioner, does not become interfered with, it is deemed fit and proper to not only quash the order enclosed in Annexure P-1, but also to quash the order annexed herein, as Annexure P-4. Consequently, both above orders are quashed, and, set aside. The personal and surety bonds as ordered to be cancelled and forfeited, and, be not cancelled, and, forfeited.

7. Moreover, the NBWs as became issued, upon the bail petitioner shall be forthwith recalled, and, if not executed, they shall not be executed upon the petitioner. Nonetheless the petitioner shall forthwith record his personal appearance before the learned Magistrate concerned.

14.02.2022

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(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:

Yes/No