

101

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

CRM-M-10165-2022

Date of decision: 11.03.2022

MANVIR SINGH @ MANVEER SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Vikas Bali, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner is an accused in FIR No.123 of 13.07.2016, registered at Police Station Sadar Khanna, District Police Khanna, District Ludhiana. In the FIR (supra), offences constituted under Sections 506 of IPC, and, under Section 3 of SC & ST (Prevention of Atrocities) Act, 1989, are embodied.

2. The investigating officer concerned, after making investigations into the offences (supra), had filed an affirmative report under Section 173 Cr.P.C., before the learned trial Judge concerned. After presentation of the afore report by the investigating officer concerned, before the learned trial Judge concerned, the trial against the accused-petitioner herein has commenced. On various dates the PWs were summoned, and, their testifications were recorded. However, through an order made on 17.11.2021 the learned trial Judge concerned, made an order for cancelling, and, forfeiting the personal, and, surety bonds of the petitioner herein. Moreover, through the order, made on 17.11.2021 the learned trial Judge concerned, also ordered for issuance of non-bailable

warrants, upon, the petitioner herein.

3. The personal, and, surety bonds, as, became furnished by the petitioner, and, also became subsequently attested, and, accepted, were all done, in pursuance to the petitioner becoming admitted to bail in his petition cast, under Section 439 Cr.P.C. The order admitting the petitioner to regular bail is embodied in Annexure P-2.

4. Though, the petitioner was required to make his regular personal appearances, before the learned trial Judge concerned, unless he was validly exempted. The execution, and, filing of the vakalatnama, by his defence counsel one, Mr. Dinesh Katyal, occurred in the year 2018. Consequently, the engaged learned defence counsel to defend him in the trial, was alongwith other accused, except on certain dates when he became validly exempted from recording his personal appearance, before the learned trial Judge concerned, became enjoined to put in his regular appearances before the learned trial Judge concerned. The learned trial Judge concerned, owing to prevalence at the relevant time of corona pandemic, kept on deferring the recording of the depositions of PWs, and, also hence adjourned the judicial proceedings appertaining to trial of case No.SC/279/2017. On 25.01.2022 the accused-petitioner one Manvir Singh failed to record his personal appearance, before the learned trial Judge concerned, leading the learned trial Judge concerned, to order for the issuance of non-bailable warrants, upon, him besides qua other absenting accused one Boota Singh. Though, the learned trial Judge was enjoined to, given the accused-petitioner herein becoming defended in the trial, by his validly engaged counsel, to record the latter's appearance, on behalf of the accused rather on the dates concerned. However, the order made on 25.01.2022, does not reveal, that the learned trial Judge concerned, recorded the appearance on the date (supra), of the counsel engaged by the accused. Furthermore, when on 25.01.2022 the

learned trial Judge concerned, has not recorded therein, that the judicial proceedings, as, became drawn on the date (supra), were for recording of the testifications of PWs concerned, rather when perusal thereof, does unfold, that there was deferment of trial or postponement of recording of PWs concerned, as one of the accused, was in judicial custody, whereupon, hence the learned trial Judge concerned, ordered for his being further remanded to judicial custody. The effect thereof is that no proceedings appertaining to the recording of the testifications of PWs concerned, were drawn, and, the further effect thereof, is that the presence on the date (supra), of the petitioner herein was not imperative.

5. In addition, even if the petitioner herein, did not without any affirmative orders being made on his application seeking his exemption from personal appearance, on the date (supra), hence by the learned trial Judge concerned, rather record his personal presence on date (supra), before the learned Magistrate concerned, yet, since he had engaged counsel, therefore, the learned trial Judge concerned, was enjoined to record the appearance of the counsel engaged by the accused, in portrayal of representation on his behalf in the proceedings drawn on 25.01.2022. However, the afore fact remains not recorded thereins. The effect thereof is obvious, that there was no legal obligation cast, upon, the learned trial Judge concerned, to yet ensure, that the accused-petitioner herein rather recording his personal appearance, on the date (supra), before him, nor it was imperative for the learned trial Judge concerned, to proceed to secure the presence of the absenting accused through issuance of non-bailable warrants, upon, him. Contrarily issuance of summons upon him was a sufficient recouring alongwith the elicitation of an explanation from him about his failure (supra).

6. Be that as it may, on 17.11.2021, without the learned Magistrate concerned, referring to the report of the executing officer concerned, and, it revealing, that the executing officer concerned, had not executed the non-bailable warrants, upon, the petitioner herein or his effort to execute the NBWs, upon, the petitioner, rather succeeding, and, yet the petitioner herein failing to record his personal appearance before the learned trial Judge concerned, has proceeded to come to an untenable conclusion, that the petitioner herein rather had intentionally, and, deliberately avoided to cause his personal appearance, before the learned trial Judge concerned. The lack of mentioning of the above in the order of 17.11.2021, when becomes conjoined with the discussion, as, made (supra), with respect to untenability of the orders, made on 25.01.2022, results in the legal consequence, that the cancellation of the personal, and, surety bonds of the petitioner, as, became furnished by him in pursuance to the orders embodied in Annexure P-2, was a gross breach of procedural propriety.

7. Therefore, the petition is allowed. The impugned order, as embodied in Annexure P-3 is quashed, and, set aside. However, the petitioner herein shall make his regular personal appearance before the learned trial Judge concerned, unless his personal appearance is validly exempted. If the NBWs are not issued, they may not be issued, and, if the NBWs are issued thereupon they are ordered to be forthwith recalled.

(SURESHWAR THAKUR)
JUDGE

11.03.2022

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