

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 11325 of 2022

Date of Decision: 16.3.2022

Varinder Singh @ Raja

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

(Through video conferencing)

1. Through an order made on 25.8.2020, by the learned Additional Sessions Judge, Jalandhar, upon CIS case No. BA-3087 of 2020, the claimed therein indulgence of regular bail, became granted to the petitioner herein. However, the hereinafter extracted conditions, were imposed upon by the petitioner.

“(a) That he will not tamper with the prosecution evidence and will not offer any threat, promise or inducement, directly or indirectly to any of the person acquainted with the facts of the case, dissuading them from disclosing the same to the Court/investigating agency; and

(b) That he will not leave the limits of this country without prior permission of the court.

(c) That he will appear in the court on each and every date of hearing.”

2. Though, the petitioner in compliance with the relevant condition

No. 3, appeared personally before the learned Court concerned, yet he failed to

cause his personal appearance before the learned Sessions Judge, Jalandhar on 11.2.2022, leading the latter to make an order of cancellation, and, forfeiture of the personal, and, surety bonds, as became furnished by the petitioner, in sequel to the order drawn on 25.8.2020, by the learned Additional Sessions Judge, Jalandhar. Moreover, through the above order, the learned Sessions Judge, Jalandhar also ordered for issuance of warrants of arrest against the petitioner herein.

3. The petitioner becomes aggrieved from the afore drawn order, and, makes a challenge qua its validity, through his rearing the instant petition before this Court.

4. Visibly, it is borne out from a reading of the impugned order, that the petitioner herein was represented by a validly engaged counsel, and, thereupon, it became incumbent upon the counsel, engaged by the petitioner to, either make his appearance on behalf of the petitioner, before learned trial Judge concerned, or in case he was unavailable or busy in some other Court, to ensure his making his presence before the learned Judge, for ensuring his making a valid explanation to the learned Judge concerned, with respect to the absenting accused, omitting to personally record his presence, before the learned trial Judge concerned. However, neither the counsel concerned, nor the learned trial Judge concerned rather attempted to make the afore endeavour, whereas, it was an imperative duty of both. Moreover, though, it is incumbent upon the learned trial judge concerned, to ensure that the apposite condition, as carried in the order made on 25.8.2020, becomes completely complied with, unless the petitioner herein secures his valid exemption from his personal appearance, yet the emphatic insistence upon the petitioner, qua his making his personal appearance, before the learned trial Magistrate concerned, would arise, only when efficacious proceedings were required to be made on the

relevant date, inasmuch as either the prosecution witnesses, despite being available, their testimonies becoming not amenable to be recorded, given the accused omitting to, without any valid reason or without any exemption being granted, hence make his personal appearance, and/or, when the personal appearance of the absenting accused, was required either for putting a notice of accusation or for putting a charge to him. However, the order made on 11.2.2022, does not reveal, that the Sessions case concerned, rather was listed on the date (*supra*), for the recording of the testimonies of the PWs concerned, and, that for want of the petitioner, making his personal appearance before him, their testimonies could not be recorded, leading to the ill-result of the learned trial Judge concerned, ordering for the deferment of the recording of the PWs concerned, thereupon, resulting in an untenable delay in the conclusion of the trial, merely for the petitioner herein failing to record his personal appearance before this Court.

5. The want of the afore echoings in the order recorded, on 11.2.2022, does not constrain this Court, to assign any validity thereto. Moreover, since after the non-appearance of the petitioner, on the relevant date, hence before the learned trial Judge, could also result in the learned trial Judge proceeding to secure, hence through ordinary process, the personal presence of the petitioner, before him, yet he failed to recourse the above, rather he proceeded to, only for a singular non-appearance of the petitioner, before him, and that too, on a date when the judicial proceedings were not drawn, for any efficacious purposes (*supra*), hence order for cancellation, and, forfeiture of the personal, and, surety bonds, as became furnished by the petitioner, causing a further ill-consequence of his personal estate, and, the estate of his surety, becoming encumbered with proceedings drawn under

Section 446 of the Cr.P.C. Moreover, the learned trial Judge concerned, also

untenably proceeded to issue warrants of arrest against the petitioner.

6. In consequence, the impugned order is quashed, and, set aside. The warrants of arrest, if not issued, be not issued, and, if issued, be forthwith recalled.

7. The petition stands disposed of.

(SURESHWAR THAKUR)
JUDGE

March 16, 2022
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes