

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

**CRM-M No. 12223 of 2022
Date of Decision: 23.03.2022**

Gurjit Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Harinder Pal Singh Ishar, Advocate for the petitioner.

Mr. Bhupender Beniwal, Assistant Advocate General, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner is an accused in FIR No. 14 of 12.03.2017, registered at Police Station Chohla Sahib, District Tarn Taran (Punjab), wherein offences under Sections 420/506 of the IPC, are constituted.

2. After filing of affirmative report under Section 173 of the Cr.P.C. by the Investigating Officer (IO) concerned, before the learned trial Magistrate concerned, the latter appears to have endeavoured, to secure the personal presence of the accused-petitioner, through his ordering for valid personal service being caused through ordinary process, upon him. It also appears from a perusal of Annexure P-3, that the petitioner had engaged counsel, for defending him in trial, as commenced against him, from FIR (supra). Furthermore, a perusal of Annexure P-3 reveals, that the petitioner had intimated his counsel to secure, on medical grounds, his exemption from his making his personal appearance, before the learned Magistrate concerned. The reason, as set forth in the afore Annexure P-3, is comprised in the factum of his suffering from mild fever, cough and chest congestion

with breathlessness etc., and, also in respect thereof, a medical prescription

slip became appended alongwith Annexure P-3. It appears, that the afore application as was asked to be filed by the counsel engaged by the petitioner, could not be filed by the latter, before the learned trial Judge concerned, and, thereupon, the learned trial Judge concerned, for want of the petitioner making his personal appearance, before him, and that too, without any valid exemption, proceeded to cancel his personal and surety bonds, and, also ordered for his personal appearance being made through issuance of non-bailable warrants, made returnable for 17.11.2021.

3. Since, an intimation was made by the petitioner, to his counsel, for seeking his valid exemption from his personal appearance, on 17.11.2021, thereupon, it became the bounden duty of the counsel engaged by the petitioner, to move the appropriate application before the learned trial Judge concerned. In case, for any reason whatsoever, the apposite application did not come on record, thereupon, when for the afore reasons, the petitioner had a good and a valid reason for his omitting to record his personal appearance, on the relevant date, before the learned trial Judge concerned, hence he cannot be concluded to deliberately and intentionally, avoid his making his personal appearance, before the learned trial Judge concerned. In the impugned order, the learned trial Judge concerned, also failed to display the counsels name, as, engaged by the petitioner, thereupon, it appears that merely for any negligent act of the counsel engaged by the petitioner, the latter cannot become pained.

4. In view of the above, the present petition is allowed. The impugned order of 07.10.2021 (Annexure P-4), as, made by the learned JMIC, Tarn Taran, is quashed, and, set aside. Non-bailable warrants, if not

issued already, be not issued, and, if issued, be recalled forthwith. The accused is directed to appear before the learned trial Court concerned, and, as and when he is required to be making his personal appearance, before the learned trial Court concerned, unless validly exempted.

March 23, 2022
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(SURESHWAR THAKUR)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>