

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 11162 of 2020

Date of Decision: 28.7.2022

Intsab Alam

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. L.S.Sekhon, Advocate
for the petitioner.

Mr. M.S.Nagra, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioner is an accused in FIR No. 139 of 26.5.2019, registered at Police Station Sadar Dhuri, District Sangrur, wherein offences constituted under Sections 22 and 29 of the NDPS Act, 1985, are embodied.

2. The present petitioner became admitted to pre arrest bail, through an order made on 27.6.2019. However, his becoming admitted to pre arrest bail, was subject to his furnishing bail bonds in the sum of Rs. One lac, with two sureties in the like amount, and, also subject to the hereinafter extracted conditions:-

- “1. That the applicant/accused shall appear in the Court on each and every date of hearing.*
- 2. That the applicant/accused shall not leave the country without prior permission of the Court.*
- 3. That the applicant/accused shall not threaten or induce any witness to dissuade him from disclosing the true fact.*
- 4. That the applicant/accused will surrender before this Court within one week when the FSL report is received and seek*

regular bail afresh.

5. *That the applicant/accused shall not indulge in the case of similar nature.”*

3. Condition No. 1, made it incumbent upon the petitioner to make his regular personal appearances, before the learned trial Judge concerned, unless he became validly exempted. Though, the investigating officer concerned, filed an affirmative report under Section 173 of the Cr.P.C., before the jurisdictionally empowered Magistrate on 19.2.2020. However, on the date (supra), as unfolded by the order, to which Annexure P-9 is assigned, only co-accused Zulfikar Ali rather made his personal appearance, and, he was charged for the relevant offences, however, he did not plead guilty, and, claimed trial. Since on the above date, the present petitioner did not record his personal appearance, yet the jurisdictionally empowered Court proceeded, to order for the issuance of non-bailable warrants, upon him, and, made them returnable for 3.3.2020. However, the non-bailable warrants, did not come to be executed, upon the present petitioner, and, therefore through an order made on 3.3.2020, the learned Magistrate concerned, directed for the issuance of fresh non-bailable warrants, against the present petitioner, and, made them returnable for 27.3.2020.

4. The petitioner is aggrieved from the order, drawn on 3.3.2020, and, as becomes carried in Annexure P-8.

5. The impugned order, as made on 3.3.2020, would become validated by this Court, only when it was evidently proven that, on 19.2.2020, the present petitioner, despite being validly served, has not recorded his personal appearance, before the learned trial Judge concerned. However, in testing the above, there was required to be a clear reflection in the order of 19.2.2020, that despite valid service, being caused, upon the present petitioner, he omitted to cause his personal appearance, for the relevant purpose, before

the learned trial Judge concerned, as, then only it could be concluded, that he deliberately omitted to cause his personal appearance, for the relevant purpose, before the learned trial Judge concerned. However, in the order, as made on 19.2.2020, there is no echoing that the present petitioner became validly served. If the present petitioner was not validly served, for his making his appearance on 19.2.2020, before the learned trial Judge concerned, thereupon it became incumbent, upon the learned trial Judge concerned, to initially cause the personal appearance of the present petitioner, through his recouring the ordinary process, and, if the ordinary process failed, to thereafter issue bailable warrants against the present petitioner, and, yet if the above process failed, to subsequently issue non-bailable warrants. However, the learned trial Judge concerned, without initially any notice, being issued upon the petitioner, qua his causing his personal appearance on 19.2.2020, and, also without thereafter rather no orders being made, for the causings of his appearance, through issuance(s), and, execution(s) of ordinary process, upon, the petitioner, yet proceeded to a draw coercive process against the petitioner. However, when the petitioner never imminently became served through any ordinary processes for the relevant purpose. Therefore, the impugned order is to be construed to be rendered in a slipshod manner, and, with the grossest non-application of judicial mind, inasmuch as, the learned trial Judge proceeding to, without initially recouring the ordinary process, for causing therethrough personal service, upon the petitioner, rather straightway ordering for the issuance, and, execution of non-bailable warrants against the petitioner, wherethrough, he has untenably threatened his personal liberty. Consequently, the impugned orders suffer from a gross infirmity, and, requires to be quashed, and, set aside.

6. In sequel, the instant petition is allowed. Impugned orders dated

19.2.2020, and, 3.3.2020, are quashed, and, set aside.

7. The learned trial Judge concerned, is directed to remain careful in future.

(SURESHWAR THAKUR)
JUDGE

July 28, 2022
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No