

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

**CRM-M No. 18879 of 2022  
Date of Decision: 05.05.2022**

Kulwant Singh

..... Petitioner

**Versus**

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR**

Present: Mr. Brijeshwar Singh Bhalla, Advocate,  
for the petitioner.

Mr. Sandeep Singh Deol, Deputy Advocate General, Punjab

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**SURESHWAR THAKUR, J. (ORAL)**

1. The present petitioner is facing trial in respect of FIR No. 100 of 19.07.2021, registered at Police Station Badhni Kalan, District Moga, constituting therein an offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. A perusal of the zimni orders made prior to 26.04.2022 reveals, that the petitioner herein engaged a defence counsel, for the latter defending him in the trial, as, became entered, upon, by the trial Judge concerned, in respect of FIR (supra).

3. Moreover, it is also revealed from the orders made prior to 26.04.2022, that the learned trial Magistrate concerned, has made affirmative orders on the petitioner's application, seeking exemption from his personal appearance.

4. Be that as it may, on 26.04.2022, the learned trial Judge concerned, ordered for the cancellation of the apposite order granting bail to

the accused, and, also proceeded to order for the cancellation of the personal

and surety bonds of the accused to the State of Punjab, besides, ordered for the personal appearance of the accused being ensured through issuance of non-bailable warrants, upon him. The above made order is challenged before this Court.

5. As afore stated, the effect of the petitioner engaging a counsel for defending him in the trial concerned, made it incumbent upon the counsel concerned, to ensure his appearing on behalf of the accused, before the learned trial Judge concerned, and, if for any valid reason, and, irrespective of the fact, that no application became preferred for seeking exemption qua the personal appearance of the accused, before the learned trial Judge concerned, to purvey an explanation for the accused, omitting to cause his personal appearance before the learned trial Judge concerned. Apart therefrom also, the learned trial Judge concerned, was also expected to elicit from the counsel concerned, an explanation with respect to the omission of the petitioner to make his personal appearance before her. The learned trial Judge concerned, has failed to cause the appearance, before her, of the counsel engaged by the accused nor has elicited any explanation from him, in respect of the petitioner herein failing, to record his personal appearance before her, whereas, in case the learned trial Judge concerned, had ensured the presence of the counsel engaged by the accused, and, had also ensured his giving a sound explanation, with respect to the relevant non-appearance(s), thereupon, also the principles of natural justice would become meted compliance, and, also would have resulted in the impugned order being not made.

6. Furthermore, since a reading of the order sheets, as, made prior to the making of the impugned order (Annexure P-1) reveal(s), that on

the relevant date also the matter was listed for arguments for framing of charge, thereupon the afore drawn proceedings may not have required the personal appearance before her, of the accused, as, only after an order framing charge was made, by the learned trial Judge, then alone the personal appearance of the accused, before the learned trial Judge concerned, was imperative, as the charge was to be put to him, and, he was required to be putting his signatures thereons. In case, on the relevant date, hence no efficacious proceedings were to be drawn by the learned trial Judge concerned, and, also when he had engaged counsel for the relevant purpose, besides when the above omissions have been made by the learned trial Judge concerned, as such, also the principles of natural justice were required to be yet complied with, especially when the learned trial Judge proceeded to order for the cancellation and forfeiture of the personal and surety bonds to the State of Punjab, especially when the above beget the ill-sequel of the all apposite estates becoming untenably encumbered.

7. The further reason for interfering with the impugned order, arises from the factum, that the learned trial Judge concerned, also has proceeded to cancel the regular bail, granted to the petitioner by an order of the Court of competent jurisdiction, cancellation whereof was not amenable, unless prior thereto, notice was served upon the petitioner. Since, obviously prior to the learned trial Judge ordering for the cancellation of the order granting bail to the petitioner, no notice became served upon the petitioner, rather she proceeded to cancel the apposite order granting bail to him, thereupon, too the afore procedural non-compliance, does stain, the impugned order with the vice of complete arbitrariness.

8. In view of the above, the impugned order of 26.04.2022 (Annexure P-1), as, made by the learned Special Court, Moga, is quashed and set aside. NBWs, if issued, be recalled forthwith, and, if not issued, be not issued.

9. Disposed of.

**May 05, 2022**

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**( SURESHWAR THAKUR )  
JUDGE**

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| <i>Whether Speaking/reasoned</i> | <i>Yes</i> |
| <i>Whether Reportable</i>        | <i>Yes</i> |