

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

**CRM-M No. 21390 of 2022
Date of Decision: 18.05.2022**

Ravi Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Gaurav Datta, Advocate, for the petitioner.

Mr. Bhupender Beniwal, Assistant Advocate General, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner, by filing the present petition under Section 438 Cr.P.C., seeks grant of anticipatory bail in case FIR No. 110 of 16.07.2016, which was registered against him, at Police Station City Nawanshahr, District SBS Nagar, constituting therein offences under Sections 419, 420 & 120-B of the Indian Penal Code.

2. For the petitioner not making his personal appearance(s), before the learned trial Magistrate concerned, on the relevant date(s) concerned, despite his being served initially through non-coercive processes, and thereafter, despite his presence being ensured to be secured through execution of NBWs, upon him, rather led the learned Magistrate concerned, to recourse the mandate of Section 82 of the Cr.P.C. In consequence, after the learned Judicial Magistrate concerned, ordering for service of proclamation notice, upon, the present petitioner, and, after a report of the serving constable, being placed, before him, made an order on 10.06.2019 (Annexure P-2), that though the present petitioner became purportedly served with a proclamation notice, and, yet despite 30 days elapsing

therefrom, the present petitioner not making his personal appearance(s),

before the learned Magistrate concerned, that thereupon the present petitioner being a proclaimed person.

3. Be that as it may, believing the statement made at the Bar, by the learned counsel for the petitioner, that subsequent thereto, the petitioner has surrendered, before the learned Magistrate concerned, and, also believing his further statement at the Bar, that the petitioner became granted, the facility of interim bail, through an order made on 02.12.2020, but the above making of an indulgence of anticipatory bail to the present petitioner, was subject, to certain conditions becoming imposed upon him, more importantly, one of conditions being qua his regularly making his personal appearance before the learned Magistrate concerned.

4. The above condition appears to be have been purportedly breached by the present petitioner, leading to the issuance of NBWs, upon, the present petitioner. The above issuance of non-bailable warrants upon the present petitioner has brought pain to the present petitioner, and, has led him to access this Court, for a direction being made upon the learned Magistrate concerned, to not issue the NBWs, if not issued, and, to recall them forthwith, as, unless the above is done, the personal liberty of the petitioner would become fettered and curtailed.

5. Be that as it may, even if there was any breach of any condition, imposed by the learned Sessions Judge, SBS Nagar, while admitting the present petitioner to anticipatory bail, more specifically qua the one pertaining to his making regular appearance before the learned Magistrate concerned, yet unless the principles of natural justice, became complied with, inasmuch as prior to the order of cancellation of the bail order, being made, and, or personal, and, surety bonds becoming rescinded, and,

becoming forfeited to the State of Punjab, rather imperatively a notice becoming issued upon the petitioner, or, his counsel to give to an explanation about the valid good, and, cogent reasons, for the petitioner not making his personal appearance(s) on the relevant date(s). Moreover, only if the above prior notice was issued, and, also evidently became personally served upon the accused, and, yet his not causing his personal appearance, thereupon, it was open to the learned Magistrate concerned, to recourse coercive processes to ensure that the petitioner makes his personal appearance before him.

6. Evidently, there is no material on record qua above, and, believing the statement of the learned counsel for the petitioner, that prior to the apposite cancellation order being made by learned Magistrate concerned, no notice became served upon the petitioner. Therefore, the order cancelling the grant of interim bail to the present petitioner, by the learned Sessions Judge concerned, is ridden with pervasive vices of breaches being visited to the principles of natural justice, and, thus is rescinded.

7. Though, after the making an order of 10.06.2019 (Annexure P-2), declaring the present petitioner as a proclaimed offender, he had made his surrender before the learned Magistrate concerned, and, subsequently he became admitted to anticipatory bail, by the learned Sessions Judge concerned, therefore, since upon his making his personal appearance, before the learned Magistrate concerned, subsequent to the order of 10.06.2019 (Annexure P-2), the purpose of the apposite declaration became served, and, cannot be legally permitted to survive at any stage thereafter(s), unless

recoursed, by the learned trial Judge concerned, for the relevant purpose, his yet failing to make his personal appearance for the relevant purpose, before him / her, resulting in the drawing of a fresh order, declaring the non-appearing accused, as a proclaimed offender. In other words, upon surrender of the present petitioner, subsequent to the drawing of an order declaring the present petitioner as a proclaimed offender, rather there was no valid jurisdictional empowerment in the learned Magistrate concerned, to yet ensure that, its force subsists, as any subsequent non-appearance(s), if became well explained, would relent him from drawing coercive processes, and, or if they did not become well explained, would rather result in the drawings of fresh motions, for the relevant purposes, by the learned Magistrate concerned, rather than his keeping it intact or his yet ensuring the longevity of the earlier lapsed proclamation order, given its merging into the thereafters surrender of the petitioner, before the learned trial Magistrate concerned.

8. Therefore, NBWs if not issued, be not issued, and, if issued, be forthwith recalled.

9. Disposed of.

May 18, 2022
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(SURESHWAR THAKUR)
JUDGE

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