

102 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-30864-2022

Date of decision:19.07.2022

BALWINDER SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. B.S. Bajwa, Advocate for the petitioner.

Mr. M.S. Nagra, Asst. A.G. Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner is an accused in FIR No.66 of 01.05.2019, registered at Police Station Mehta, District Amritsar, wherein an offence constituted, under Section 61 of Excise Act, is embodied.

2. The investigating officer concerned, after concluding investigations into the petition FIR, had instituted a report under Section 173 of Cr.P.C., before the learned Magistrate concerned. A reading of the order, as, made on 15.07.2019, by the learned Additional Sessions Judge, Amritsar, and, as becomes embodied in Annexure P-2, reveals, that he had proceeded to admit the present petitioner on interim bail, but subject to his rendering co-operations, in the investigations in respect of the petition FIR, and, also subject to his furnishing personal, and, surety bonds before the arresting officer concerned. Subsequently, through an order drawn, on 20.07.2019, and, as embodied in Annexure P-3, the learned Additional Sessions Judge, Amritsar proceeded to make absolute the prior thereto order rendered, on 15.07.2019. Therefore, from a reading of both Annexures P-2, and, P-3, it is apparent that the present petitioner became admitted to anticipatory bail.

3. However, on 27.04.2022, the learned Judicial Magistrate Ist Class, Baba Bakala Sahib hence for want of personal appearance before him, by the present petitioner, and, that too without any intimation, besides without any affirmative order being made on an exemption application, being preferred by the present petitioner, rather proceeded to cancel the order, as made by the learned Additional Sessions Judge, on 20.07.2019, wherethrough, the latter had admitted the present petitioner to pre-arrest bail. Moreover, through an order drawn on 27.04.2022, the learned trial Magistrate concerned, also ordered for cancellation, and, forfeiture of the personal, and, surety bonds, as became furnished by the accused, and, by his surety, and, thereafter ordered for the issuance of non-bailable warrants qua the accused, and, made them returnable for 18.07.2022.

4. For the reasons to be assigned hereinafter, the above made order, is completely legally deficit, as the learned Magistrate concerned, held no valid empowerment either to rescind or to cancel the order passed by learned Additional Sessions Judge, Amritsar, on the present petitioner's application, cast under Section 438 of Cr.P.C., wherethrough, he admitted the present petitioner to pre-arrest bail. The jurisdiction, if any, for rescinding or annulling the order, as made by the learned Additional Sessions Judge, Amritsar, did solitarily vested in the latter, and, never became vested in the learned Magistrate concerned, and, if so, that too within the contours of the provisions enshrined in Section 438 of Cr.P.C., inasmuch as, upon the learned Public Prosecutor concerned, making a motion before the learned Additional Sessions Judge, Amritsar, that the present bail petitioner, is not making co-operations in the investigations, as, underway qua the petition FIR, and/or, his making breach of the other bail conditions. However, the learned Public Prosecutor concerned, did not make any motion, within the above permissible parameters, before the learned Additional Sessions Judge, Amritsar nor the latter proceeded to exercise his valid empowerment to rescind or cancel the orders made by him, on

20.07.2019. But untenably, rather the learned Magistrate concerned, proceeded to cancel the orders, as, made by the learned Additional Sessions Judge, Amritsar, and, as, becomes embodied in Annexure P-3.

5. Though, the remedy as available to the present petitioner, to make a challenge to the orders drawn, on 20.07.2022, by the learned Magistrate concerned, was through his preferring thereagainst a revision petition, before the competent Revisional Court concerned, but yet the present petitioner chose to cast a challenge thereto, through his making an application under Section 438 of Cr.P.C., before the learned Additional Sessions Judge, Amritsar, which obviously for lack of its maintainability, given it being maintainable, only when there was an apprehension of his arrest, especially when investigations into the petition FIR were underway, whereas, when the investigations here hence being complete. Therefore, on the above application, the learned Additional Sessions Judge, rather proceeded to tenably decline relief to the present petitioner.

6. Though, the orders made by the learned Additional Sessions Judge, Amritsar, and, as become carried in Annexure P-4, do not require, theirs becoming invalidated, given theirs being legally well founded, but even when the present petitioner, has not availed the appropriate remedy, but has through the instant petition cast under Section 438 of Cr.P.C., hence cast a challenge to the order made, on 27.04.2022, by the learned Magistrate concerned, thereupon yet when the liberty of the present petitioner is threatened, and, that too untenably, thereupon, this Court deems it fit, and, appropriate to quash, and, set aside the order (supra).

7. The paramount reason, is comprised in the above stated fact, of its being made without any jurisdictional competence, and, also given rather straight away the forfeiture of the personal, and, surety bonds, being ordered by the learned Magistrate concerned, and, thereafter his issuing non-bailable warrants of arrest against the present petitioner, all whereof are completely legally unwanted, and,

uncalled for recourses, as initially the petitioner was to be served through non-coercive processes, and, in case thereafter, there was no personal appearance of the petitioner, before the learned trial Judge concerned, thereupon, he would become ably empowered to order for the issuance, and, execution of non-bailable warrants, upon, the accused. However, the mere absence without intimation, of the present petitioner, before the learned Magistrate concerned, through may have been not condonable, but though yet when the order of 27.04.2022, does not record that, on that day the accused, was to face proceedings for the charge, being put forth to him or the prosecution witnesses being available for the deposition(s) being recorded, but for the non-appearance of the present petitioner, yet rather theirs becoming discharged, thereupon too, the learned Magistrate concerned, could not make the impugned order, and, that too without any adherence to the principles of natural justice. The reason being that, hence he has not only untenably encumbered the estate(s) of the concerned, with the ill consequence of the amounts carried in the bonds concerned, being realized from their respective estates, but also has encumbered, upon the present petitioner, the curtailments of his personal liberty, and, that too with the grossest non-application of mind, and, in a slipshod manner.

8. In consequence, the order of 27.04.2022, as made by learned JMJC concerned, is quashed, and, set aside. The petitioner is directed to forthwith record his personal appearance before the learned trial Court concerned.

(SURESHWAR THAKUR)
JUDGE

19.07.2022

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