

134 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32196-2022

Date of Decision: July 26, 2022

Baljeet Singh @ Babbu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present:- Mr. Kulwinder Singh, Advocate for the petitioner.

SURESHWAR THAKUR, J. (Oral)

1. The petitioner is an accused in FIR No.55 of 31.05.2017, registered at Police Station P.S. City-2, Abohar, District Fazilka. On assumption of cognizance, and, jurisdiction upon the, petition FIR, though the learned trial Judge was able to initially, procure, through his recouring the ordinary process, hence the presence of the present petitioner, before him. However, despite the accused becoming defended in the trial, by a validly engaged counsel, yet the learned trial Judge, on the apposite subsequent non-appearance of the petitioner, rather made the hereinafter extracted order:-

“Case received by way of transfer. It be registered. Learned counsel for the accused has move an application for exemption from personal appearance of accused Atul Kumar for today. Heard. Keeping in view the reasons mentioned in the exemption application, personal appearance of accused Atul Kumar is exempted for today only.

Despite repeated calls of the case since morning neither accused Kulbir Singh, Baljeet Singh and Harshdeep Singh @ Monu nor any exemption application on their behalf has been received in the court. They have absented themselves from the court without any intimation. As such, their bail bonds and

surety bonds are cancelled and forfeited to the state. Now accused Kulbir Singh, Baljeet Singh and Harshdeep Singh @ Monu be summoned through Non Bailable Warrantes of arrest for 26.05.2022.

Jasvir Singh
Date: 28.03.2022

(Vishesh)
Addl. Sessions Judge,
Fazilka/PB0228

2. A reading of the above extracted order, reveals that though in the apposite order, the learned defence counsel as became engaged by the present petitioner hence made his appearance on his behalf, before the learned trial Judge concerned, but in the order made on 28.02.2020, neither the present petitioner nor his validly engaged counsel, rather made their respective appearances before the learned trial Judge concerned. However, even if the above had occurred, yet, the learned trial Judge concerned, was required to be initially asking for the appearance, before him, of the validly engaged counsel by accused unless he was not available within the premises of the Court, rather for initially ensuring the emanation of an explanation from him, with respect to the non-appearance before him, of the present petitioner, who, on the above date without becoming validly exempted, from his personal appearance, did not cause any appearance, before the learned trial Judge concerned. The learned trial Judge concerned, however, omitted to do so, and, straight away ordered for the cancellation of personal surety bonds, besides ordered for their forfeiture the State of Punjab, and, thereafter ordered, for the presence of the absenting accused, being procured through non-bailable warrants becoming executed upon him/them.

3. The above extracted order has completely breached the principles of natural justice, as prior to the above ill consequence(s) becoming visited upon the personal liberty, and, also upon the respective estates of the concerned, it became imperative upon the learned trial Judge concerned, to issue a notice upon all concerned, and, thereafter if, the explanation thereto, was found wanting, to thereafter proceed to draw the impugned order, which however, has not been done, in sequel the impugned order, is vitiated.

4. Therefore, the impugned order of 28.03.2022, as carried in Annexure P-9 is quashed, and, set aside.

5. However, the petitioner is directed to forthwith make his surrender before the learned trial Magistrate concerned, and, upon doing so, the learned Magistrate concerned shall make appropriate orders, in accordance with law. The learned trial Judge is cautioned against the above error being repeated.

6. Disposed of.

July 26, 2022
sarita

(SURESHWAR THAKUR)
JUDGE

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