

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 38763 of 2021
Date of Decision: 09.2.2022**

Ankur Singh @ Michael

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Naresh Jain, Advocate
for the petitioner.

Mr. Harbir Sandhu, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

(Through video conferencing)

1. In FIR bearing No. 0044 of 27.3.2018, registered at Police Station Gidderbaha, District Sri Muktsar Sahib, an offence under Section 21 of the NDPS Act, 1985, is embodied.
2. From the conscious, and, exclusive possession of the petitioner, recovery of 7 grams of heroin, became effected, from the relevant site, by the investigating officer concerned.
3. The learned State counsel, on the instructions, received from ASI Ranjeet Singh, submits that as a matter of fact, from the site of occurrence, and, from the conscious, and, exclusive possession of the bail applicant-petitioner, recovery of 7 grams of heroin, became effectuated. He further submits, that the weight of the afore seizure falls within intermediate quantity thereof.
4. Consequently, the rigours of Section 37 of the NDPS Act, are not

applicable to the weight of the afore seizure, and, the bail applicant-petitioner is entitled both to the indulgence under Section 439 Cr.P.C., and, also to the indulgence under Section 438 Cr.P.C. Since the relevant recoveries have been effected, at the instance of the petitioner, to the investigating officer concerned, and, also when the learned State counsel, on instructions received from ASI Ranjeet Singh, submits that investigations are complete, therefore, the order, granting bail to the petitioner, by the learned Special Judge, through an order of 25.4.2018, is meritorious.

5. Irrespective of the above, since the petitioner, after opening of prosecution evidence, did not record his personal appearance, before the learned trial Judge concerned, on 27.2.2020. Consequently, the learned trial Judge concerned, ordered for cancellation of the personal, and, surety bonds of the petitioner, and, also ordered for his being summoned through non-bailable warrants, becoming executed upon him. The above made order is challenged before this Court, as, it is argued that unless it is quashed, it would interfere, and, curtail the personal liberty of the petitioner.

6. Since the want of personal appearance of the petitioner, before the learned trial Judge, was on a singular occasion, and, when the petitioner was represented in the trial concerned, by his engaged learned defence counsel, thereupon, unless there was a dire necessity of the petitioner to personally record his appearance on date (supra), and/or, that for want of his appearance, the trial, as had opened against him becoming unnecessarily forstalled. The afore evidence is amiss. Therefore, even if the accused concerned, had not sought his exemption from personal appearance hence on a singular instance, yet the learned trial Judge could not straightway proceed to, order for cancellation of his personal, and, surety bonds, and,

that too without asking for an explanation with respect to the non-appearance of the accused, from the learned defence counsel, as became engaged by him. The impugned order also does not reveal that the counsel engaged by the petitioner, pleaded no instructions from him. Consequently, the learned trial Court was expected to in the expediency of justice, to ensure his personal appearance, through initially upon, issuance of summons upon him, and, upon the petitioner remaining intentionally unresponsive thereto rather, to thereafter, hence issue non-bailable warrants, than at the outset issuing non-bailable warrants upon the petitioner. Therefore, the order challenged before this Court, is rendered vitiated, and, is liable to be interfered with.

7. Consequently, the order for cancellation of personal, and, surety bonds of the petitioner, and, also for his being summoned through non-bailable warrants, is vacated, and, set aside, as there is no evidence available before the learned trial Judge, nor is available before this Court, displaying that the petitioner, had intentionally avoided his causing his appearance before the learned trial Judge concerned, or, had absconded, and, that thereupon, the trial, as had opened against him, has become unnecessarily forstalled. The non-bailable warrants, be not issued, and if already issued, be recalled forthwith.

8. The petition stands disposed of.

9. Copy dasti.

(SURESHWAR THAKUR)
JUDGE

February 09, 2022
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes