



CRM-M-40551-2024 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.130

Case No. : CRM-M-40551-2024 (O&M)

Date of Decision : September 09, 2024

Samuel @ Sam Petitioner

vs.

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Amandeep Singh Manaise, Advocate
for the applicant-petitioner.

Ms. Manjot Kaur, AAG, Punjab.

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GURBIR SINGH, J. :

1. **CRM-36200-2024** : This application has been moved under Section 528 BNSS for amendment of the head note and prayer clause of the petitioner by way of adding offence under Sections 379 and 411 IPC.

1.1 For the reasons mentioned in the application, the same is allowed and Sections 379 and 411 IPC, which are necessary for proper adjudication of the case in hand, are ordered to be incorporated in the 'head note' as well as in the 'prayer clause' of the present petition, as annexed with the present application.

1.2 Registry is directed to do the needful.

1.3 The application stands disposed of.

2. **Main Case** : Prayer in the present petition is for quashing of

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order dated 22.07.2024 (Annexure P-3), passed by learned Special Court, Gurdaspur (hereinafter referred to as – the Trial Court), whereby bail granted to the petitioner was cancelled on account of his absence on the date of hearing in case bearing FIR No.30 dated 07.04.2022, under Section 21(B) of the NDPS Act and Sections 379 & 411 IPC, registered at Police Station Qadian, Police District Batala, District Gurdaspur.

3. The prosecution version, in brief, is that on 07.04.2022, at about 08:00 PM, after receiving secret information that the petitioner was involved in selling intoxicating substances in the villages and nearby areas of Qadian, barricade was laid at T-Point Khara Road, Partap Nagar, Qadian, District Gurdaspur and checking was started. The petitioner came on Splendor Plus motorcycle and 07 grams of heroin was recovered from the possession of the petitioner. So, he was arrested on the same day.

4. Vide order dated 26.04.2022 passed by the learned Trial Court, it was observed that the quantity of contraband recovered from the petitioner was non-commercial. So, he was ordered to be released on regular bail. Later, vide order dated 22.07.2024, the aforesaid bail granted to the petitioner was cancelled as he failed to appear before the learned Trial Court and he was ordered to be summoned through non-bailable warrant. The reason given by his counsel for his absence was that another case stood registered against him and he was apprehending arrest in that case. The learned Trial Court did not consider it to be plausible ground for exemption from appearance of the petitioner and ordered for issuance of non-bailable

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warrant of arrest.

5. Learned counsel for the petitioner has contended that absence of the petitioner before learned Trial Court was neither intentional nor deliberate. It was due to registration of another FIR against him, wherein he was apprehending arrest. It was simply an unavoidable circumstance but the learned Trial Court failed to consider the same. However, the petitioner undertakes to appear before the Court on each and every date of hearing.

6. Learned State counsel, on the other hand, has strongly opposed the contentions of learned counsel for the petitioner. She has submitted that the petitioner has failed to turn up before the learned Trial Court after availing of concession of regular bail and that too, on a ground which is not justified on his part. Such an accused should not be treated with any leniency. So, the present petition deserves dismissal.

7. I have heard the rival contentions of learned counsel for the parties and perused the case file.

8. A perusal of file shows that the petitioner has failed to appear before the learned Trial Court on one occasion only. When a person is apprehending arrest in other case, then it is not expected that he can appear the trial. The order of cancellation of bail of the petitioner is harsh. However, considering the prayer that the petitioner is ready to appear in the present case on each and every date of hearing, he is directed to surrender before the learned Trial Court on the next date of hearing already fixed there i.e. 17.09.2024 and apply for bail.

9. The learned Trial Court is directed to decide the application, so moved by the petitioner for bail, on the same day and in case, the same is dismissed, it is further directed that the petitioner be not arrested for next five days so that he may avail further remedy, if so advised.
10. The present petition stands disposed of in the aforesaid terms.
11. Pending applications, if any, shall stand disposed of along with this judgment.

September 09, 2024
monika

(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>