

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM NO. M-39735 OF 2013 (O&M)
DECIDED ON : 23.02.2015

Kishan Chand Pandey @ Monu

...Petitioner

versus

State of Haryana and another

...Respondents

and

CRM NO. M-41908 OF 2014 (O&M)

Krishan Chand Pandey @ Monu

...Petitioner

versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. V. K. Gupta, Advocate,
for the petitioner.

Mr. P. P. Chahar, DAG, Haryana.

K. C. PURI, J.

Vide this common order, I intend to dispose of two
petitions, one filed by the petitioner for quashing order dated
19.02.2009 passed by Additional Sessions Judge, Yamuna Nagar
at Jagadhari vide **CRM No. M-39735 of 2013** titled as,

"Krishan Chand Pandey @ Monu vs State of Haryana and another" and another filed by the petitioner for grant of anticipatory bail vide **CRM No. M-41908 of 2014** titled as, **"Krishan Chand Pandey @ Monu vs. State of Haryana"**, as the same have arisen out of the common FIR.

The petitioner is accused in FIR No. 413 dated 22.10.2007 under Sections 148/149/323/325/427/307 of the Indian Penal Code and Section 25 of the Arms Act registered at Police Station City Yamuna Nagar.

The accused absented from the court in the year 2008 and ultimately, he was declared proclaimed offender vide order dated 19.02.2009. The said order has been impugned in one of the petitions.

Learned counsel for the petitioner has submitted that order dated 19.02.2009 has been passed in violation to Section 82 (4) Cr.P.C and as such, the said order is void.

In order to properly appreciate the said argument, the relevant provision of Section 82 (4) is reproduced as under :-

" 82 (4) Proclamation for person absconding :-
Where a proclamation published under sub section (1) is in respect of a person accused of an offence punishable under Section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860) and such person fails to appear at the specified place and time

required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect".

There is no dispute to the said preposition of law that the offence does not fall within the section mentioned in this clause and as such, he could not be declared proclaimed offender. This preposition of law has not been disputed by learned State counsel also, but the learned State counsel has submitted that in view of authority "**Rahul Dutta vs State of Haryana**" 2012 (2) RCR (Criminal) 585, the petitioner can be declared a proclaimed person.

Learned counsel for the petitioner could not refute to the said argument in any manner.

In these circumstances, the petition vide CRM No. M-39735 of 2013 stands partly allowed. The order dated 19.02.2009 declaring the petitioner as proclaimed offender stands set-aside. However, the petitioner is declared as proclaimed person.

Now reverting to the second petition file for grant of anticipatory bail vide CRM No. M-41908 of 2014. Vide order dated 12.12.2014, this court directed the petitioner to surrender before the trial court within two weeks and on his doing so, he shall move an application for setting aside the order declaring him as proclaimed offender. It was further directed that the court shall decide the said application within a period of two months.

Accordingly, the petitioner approached the trial court and vide order dated 02.01.2015, the trial court dismissed the said application observing that the applicant/petitioner remained absent from court for a long period and the present application was moved on 23.12.2012, after a period of five years of declaring him as proclaimed offender. It was further observed by the trial court that no sufficient grounds for setting aside the order dated 19.02.2009 is made out.

The findings of the trial court remain unassailable. The accused/petitioner absented from the trial court in the year 2008. After adopting due procedure, he was declared proclaimed offender. No reasonable ground has been given for remaining absent for so many years, even after declaring him as proclaimed offender. The fact remains that a person who is avoiding appearance before the court for such a long period is not entitled to concession of anticipatory bail.

Consequently, the petition for grant of anticipatory bail stands dismissed.

FEBRUARY 23, 2015
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(K. C. PURI)
JUDGE