

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 10600 of 2018 (O&M)

Date of decision : 30.7.2018

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Nandini Devi and another

.....Petitioners

vs.

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Rishu Mahajan, Advocate
for the petitioners.

Ms. Samina Dhir, Senior Deputy Advocate General,
Punjab.

Ms. Neha Gupta, Legal Aid Counsel for respondent No.2.

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H. S. Madaan, J.

This petition for pre-arrest bail has been filed by petitioners Nandini Devi and Swami Nath Pandey, both of them being accused in case bearing No. 6085/2012 dated 27.3.2012, titled as 'Kusum Pandey vs. Umesh Pandey and others'.

Admittedly, these accused have been declared proclaimed offenders and an FIR has been registered against them under Section 174-A IPC. Though the petitioners are finding faults with the order declaring them proclaimed offenders contending that they had

challenged the summoning order in this Court, where proceedings were stayed and they were allowed to appear through counsel in the trial Court and they were wrongly declared proclaimed offenders on 13.9.2013. An FIR was registered under Section 174-A IPC, wherein they were arrested and released on 26.1.2018. They want to appear in the trial Court, but have got an apprehension that in case of their doing so, they would be sent behind bars.

But then as the things stand, no fault can be found with such order. Obviously, petitioners were aware of pendency of the proceedings against them.

Now, the question arises as to whether a person who has been declared a proclaimed offender or an absconder, is entitled to pre-arrest bail, which is a discretionary relief and no accused can claim it as a matter of right. This relief is to be granted to save innocent persons from inconvenience and harassment and not to shield the persons accused of serious offences from custodial interrogation. The law on the subject is very clear. In **State of Madhya Pradesh vs. Pradeep Sharma 2014 (2) RCR (Criminal) 269,** the Apex Court had observed that when an accused was absconding and declared as a proclaimed offender in terms of Section 82 of the Code of Criminal Procedure, then such accused should not be granted anticipatory bail.

Similar view was taken in authority **Lavesh vs. State (NCT of Delhi) 2012 (4) RCR (Criminal) 240,** by Hon'ble Supreme Court of India.

In an authority by a Coordinate Bench of this Court **Mehnga**

Singh vs. State of Punjab 2002 (2) RCR (Criminal) 501, it was observed that when an accused has been declared as proclaimed offender, a petition against the order under Section 482 Cr.P.C. is not maintainable and that the accused should first move the Court which declared him proclaimed offender and even an objection against validity of proclamation is required to be raised in the first instance before the Court which issued the proclamation and that power under Section 482 Cr.P.C. is not to be exercised in favour of a person who is absconder or avoiding service.

Under the circumstances, this petition is not maintainable even and is dismissed accordingly.

However, it is observed that in case the petitioners surrender in the trial Court within 10 days from today and move an application for regular bail, the same be disposed of expeditiously.

30.7.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No