

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CRM-M-33543-2018

Bahadur Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

2. CRM-M-29823-2018

Bahadur Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

Date of decision :-12.9.2018

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Vijay Lath, Advocate
for the petitioner.

H.S. MADAAN, J.

Vide this order, I shall dispose of two petitions i.e. **CRM-M-33543-2018** and **CRM-M-29823-2018**.

CRM-M-33543-2018 has been filed by petitioner Bahadur Singh, an accused in FIR No.88 dated 20.6.2011, under Sections 342, 341, 354, 323, 506, 148, 149, 452 and 295-A IPC, registered with Police Station

Sri Chamkaur Sahib, District Rupnagar for grant of pre-arrest bail. Whereas **CRM-M-29823-2018** has been filed by the above-said petitioner Bahadur Singh for quashing of above-said FIR and all the subsequent proceedings arising therefrom including order dated 6.7.2017 declaring him a proclaimed offender.

Briefly stated, the facts of the case are that Bahadur Singh along with his co-accused had been challaned and he was facing trial in the Court of Judicial Magistrate Ist Class, Rupnagar while being granted bail. As per the case of the petitioner, he being a truck driver had gone to Maharashtra in the beginning of March, 2017 and intended to come back before 7.4.2017, the date fixed before Judicial Magistrate Ist Class, Rupnagar. However, he was held up in District Gaochiroli in Maharashtra, which is a naxalite affected area, resultantly, the petitioner could not appear in the trial Court on 7.4.2017. Therefore, his bail bonds were cancelled and he was ordered to be summoned through non-bailable warrants for 1.5.2017. According to the petitioner, he returned to Punjab in the beginning of March, 2018, however, he had been declared a proclaimed offender vide order dated 6.7.2017. The petitioner came to know about this order in the month of March, 2018. He moved an application for grant of pre-arrest bail before the Court of Sessions, Rupnagar on 22.3.2018 but it was rejected vide order dated 16.4.2018. Therefore, he has approached this Court by way of filing **CRM-M-33543-2018**.

In the petition filed by the petitioner, he has contended that his co-accused, namely, Shamsher Singh, Kulbir Singh, Jasbir Singh and Chhatar Singh, who had faced the trial have since been acquitted by the

Court vide order dated 27.2.2018 and the case of the present petitioner is at par with them. He prays for grant of pre arrest bail.

I have heard learned counsel for the petitioner besides going through the record.

The primary question to be seen is as to whether an absconder is entitled to pre-arrest bail, the answer has to be in negative. The law laid down by the Apex Court on this point is very clear. In **Lavesh Versus State (NCT of Delhi), 2012(4) RCR(Criminal)240**, it had been observed that when a person against whom a warrant had been issued had absconded or concealed himself in order to avoid execution of warrant and declared a proclaimed offender in terms of Section 82 of the Code of Criminal Procedure, then such person is not entitled to relief of anticipatory bail.

Similarly, in **State of Madhya Pradesh Versus Pradeep Sharma, 2014(1) RCR(Criminal)269**, Hon'ble Supreme Court had observed that if one is declared as an absconder in terms of Section 82 Cr.P.C., he is not entitled to the relief of anticipatory bail.

So in view of the law laid down by the Apex Court, the petitioner is not entitled to the relief of pre-arrest bail, which is not to be granted in routine but in exceptional circumstances. Such relief is not to help the persons, who are renegades of law keeping away from the process of the Court for considerable time and then showing willingness to appear in the Court as per the convenience cooking up a story to render probable explanation for absence from the Court.

Learned counsel for the petitioner tried to build up an argument that the impugned order declaring the petitioner as proclaimed offender is

not legal one since clear 30 days time had not been given in the proclamation for appearance of the accused. In support of his contention he has referred to various authorities i.e. Parveen Versus State of Haryana, 2014(25) RCR(Criminal) 295 by a Co-ordinate Bench of this Court, Pal Singh Santa Singh V. The State, AIR 1955 Punjab 18, Parmar Lalubha Karnubha V. State, AIR 1954 SAURASHTRA 145, Savitaben Govindbhai Patel and others Vs. State of Gujarat, 2004 CrL.L.J. 3651, Gurappa Gugal and others Veersus State of Mysore, 1969 CrL. L. J. 826, Smt.Pritam Kaur and another Vs. The State of Punjab through Secretary Local Self Government Chandigarh, 1967 CrL.L.J. 1120 and Rohit Kumar @ Raju Versus State of NCT Delhi, 2008(1) RCR(Criminal) 101.

However, I do not find any force in such contentions of learned counsel for the petitioner. The authorities referred to by him are also distinguishable. Admittedly, the petitioner was declared a proclaimed offender after 30 days of publication of the proclamation and not prior to that.

As regards clear 30 days notice from the date of publication of proclamation being not there, a Co-ordinate Bench of this Court in CRM-M-3837-2014 titled Raghubir Singh Versus State of Punjab decided on 10.2.2014 has observed as under:

The proclamation was duly published, in compliance with the provisions of Section 82(2) of the Code on 25.5.2013.

The proclamation gave sufficient notice to the petitioner requiring him to appear in a particular Court at a specific

place within a period 30 days from the date of its publication. This apart, in the instant case, the petitioner already knew about the Court seized of the matter wherein he had been facing proceedings until he became absent in March, 2013. The mere fact that in the proclamation, the next date fixed before the Court was mentioned as 3.6.2013 is not sufficient to accept the contention of the petitioner that he did not get 30 days time to appear in the Court in pursuance of the proclamation published in the case. The matter would have been different had the trial Court declared the petitioner as a proclaimed person before expiry of 30 days from the date of publication of the proclamation.

As has been noticed earlier ,the petitioner had been earlier appearing in the proceedings and all of a sudden became absent. He did not bother to put in appearance before the trial Court despite expiry of period of about 4 months when he was declared as a proclaimed person. The provisions of Section 482 of the Code are subservient to the cause of justice and cannot be permitted to be misused by those guilty of absconding from the Court proceedings. The present petition is nothing but an abuse of the process of the Court, which disentitles the petitioner to seek indulgence.

In this case also things would have been different, if petitioner had been declared a proclaimed offender before expiry of 30 days from the

date of publication of proclamation but it is not so. There is no illegality or infirmity in the procedure adopted for declaring the petitioner as a proclaimed offender. As per the own case of the petitioner, he had gone to Maharashtra in the beginning of March, 2017 and intended to come back before 7.4.2017, the date fixed in the trial Court. However, he was held up in naxalite affected area and he returned to Punjab in March, 2018. This contention seems to be least convincing. Firstly, no documentary evidence is available on the record to show that the petitioner is a truck driver; that he had in fact gone to the alleged place as a truck driver or that he was held up there for such a long time. The reasoning given is least convincing and plausible. He could have informed his relatives and counsel requesting that application in the Court seeking his exemption from personal appearance be filed and Court be informed in that regard but he kept quiet and did not take any such action. He could have sent a written request to the Court concerned by post or through courier service but nothing of that sort was done. On his alleged return, he should have surrendered in the Court at the earliest and apprised the trial Court of the entire position but he did not do so. He has committed a wrong in absenting from the proceedings without any intimation but he wants to get some sort of assurance that he is not taken into custody when he appears in the Court. Such type of tactics can certainly be not allowed to succeed. A Co-ordinate Bench of this Court in **Mehnga Singh Versus State of Punjab, 2002(2) RCR(Criminal)501** while dealing with similar situation has 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 absconding or avoiding service. In that way, petition under Section 482 Cr.P.C. challenging the order declaring the petitioner as proclaimed offender is not maintainable when challan against him and his co-accused having been filed, charge framed and petitioner jumping bail having been declared as a proclaimed offender, he is definitely not entitled to such type of relief.

The petitioner has come up with a plea that his co-accused similarly placed have since been acquitted by the trial Court and for that reason, the FIR registered against him besides ancillary proceedings be quashed qua him. In support of his that contention, he has referred to authority *Sudo Mandal @ Diwarak Mandal Versus State of Punjab, 2011(2) RCR(Criminal)453* by a Division Bench of this Court. The facts and circumstances of the case were entirely different. There after the incident two accused had been arrested, whereas three had been declared proclaimed offenders. Those two accused have been tried and acquitted. In the instant case, the accused had absented from the Court during the trial. There is nothing to show that case of the petitioner is at par with the accused, who have statedly earned acquittal. As per the facts of the case, the evidence produced was found to be untrustworthy, whereas in terms of the judgment of acquittal, the accused had been acquitted by giving benefit of doubt and not for the reason of prosecution evidence adduced to be

untrustworthy.

Therefore, finding no merit in the petitions, the same stand
dismissed.

12.9.2018
Brij

(H.S. MADAAN)
JUDGE

- 1. Whether reportable? **No**
- 2. Whether speaking / reasoned? **Yes**