

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

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CRM-M NO.47042 OF 2017

DATE OF DECISION: MAY 30, 2018

Ruby Begam and another

.....Petitioners

VERSUS

State of Haryana

.....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashok Tyagi, Advocate,
for the petitioners.

Mr. Kuldeep Sharma, DAG, Haryana,
for the State.

AUGUSTINE GEORGE MASIH, J.

This petition, under Section 482 Cr.P.C., has been filed by the petitioners, challenging the order dated 23.02.2016 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Gurgaon, vide which the petitioners have been declared as proclaimed persons.

2. It is the contention of learned counsel for the petitioners that the petitioners were facing trial in FIR No.183, dated 30.07.2012, registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station DLF Phase II, Gurgaon. Because of pregnancy of petitioner No.2, she had gone to her permanent residence and was residing there alongwith petitioner No.1. Counsel for the petitioners could not inform the petitioners about the date fixed before the trial Court and, therefore, they could not appear before the Court, which initiated proceedings under Sections 82/83 of the Code of Criminal Procedure, resulting in their declaration as proclaimed persons vide impugned order

dated 23.02.2016 (Annexure P-1).

3. Challenge to the said impugned order dated 23.02.2016 (Annexure P-1) has been posed by the petitioners primarily on the technical ground that the proclamation against them was issued on 08.01.2016 for 20.01.2016, which is apparent from the proclamation appended as Annexure P-4 colly. Two publication reports dated 10.01.2016 and 12.01.2016 indicated that the publication had taken place on these dates for 20.01.2016. The mandatory period, as per Section 82 of the Cr.P.C., is not less than 30 days from the date of publishing such proclamation and, therefore, the period between 10.01.2016/12.01.2016 till 20.01.2016 is short of the mandated period, rendering the order and the process in pursuance thereto as illegal. Counsel for the petitioners, in support of this, has placed reliance upon the judgments of this Court in Ashok Kumar Vs. State of Haryana and another, 2013 (4) R.C.R. (Criminal) 550 and CrI.Misc. M No.33148 of 2017 (Roopali @ Ruby Vs. State of Haryana), decided on 07.09.2017 (Annexure P-8), wherein it has been held by this Court that if an accused is not given the mandatory period of 30 days to appear in Court, which falls short and to fulfill the said period the Court cannot adjourn the matter beyond the period of 30 days to treat it as compliance of provisions of Section 82(1) Cr.P.C. He, thus, asserts that the impugned order cannot sustain and deserves to be set-aside.

4. Counsel for the State, on the other hand, submits that the requirement of the statute having been fulfilled as the period from the date of declaration of the petitioners as proclaimed offenders till the date they were to appear having been fulfilled, irrespective of the fact that the initial period is less than the mandated 30 days, would amount to proper

compliance of the mandate of the statute as provided under Section 82 Cr.P.C.

5. Having considered the submissions made by counsel for the parties and the provisions of the statute as also the judgments relied upon by counsel for the petitioners, this Court is of the considered view that the mandate of the statute has not been complied with as 30 days clear period after publication of the notice for appearance has not been fulfilled. The period of 30 days would have been completed with effect from the date of publication i.e. 10.01.2016 with regard to petitioner No.1 and 12.01.2016 with regard to petitioner No.2 and clear 30 days thereafter would have been 19.02.2016 and 21.02.2016 respectively whereas the proclamation was for 20.01.2016, which is less than 30 days of the mandated period. The case of the petitioner is covered by the ratio of the judgments of this Court in Ashok Kumar's case (supra) and Roopali @ Ruby's case (supra).

6. In view of the above, impugned order dated 23.02.2016 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Gurgaon, declaring the petitioners as proclaimed persons is hereby set-aside.

7. Let the petitioners appear before the Chief Judicial Magistrate/Duty Magistrate, Gurgaon, on or before 30.06.2018 and move an application for grant of bail, which shall be entertained and the petitioners be released on bail on submission of bail and surety bonds to the satisfaction of the Court.

May 30, 2018
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No