

Sr. No.138

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

CRM-M-22964-2019

Date of decision:20.05.2019

Sukhwinder Singh @ Tinka

..... Petitioner

versus

State of Punjab

..... Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Tarun Vir Singh Lehal, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Present petition has been filed for quashing of the Order dated 07.05.2019(Annexure P-10) passed by the CJM, Gurdaspur, wherein the petitioner has been declared as proclaimed person without following proper procedure.

Learned counsel for the petitioner contends that the petitioner was granted bail pending trial by the Trial Court. The petitioner was regularly appearing before the Trial Court. However, on one date i.e; 12.09.2018, petitioner could not appear before the Trial Court. As a result, the bail granted to the petitioner was canceled and proceedings under Section 82 Cr.P.C were initiated. Ultimately, the impugned order dated 07.05.2019(Annexure P-10) has been passed, declaring the petitioner as proclaimed person. It is further submitted that, however, absence of the petitioner before the Trial Court was not intentional. Rather the petitioner was in custody in another case on 12.09.2018. During the process, the petitioner was declared as proclaimed person also, the petitioner continued to remain in custody only. Therefore, repeatedly even the service report qua

the warrants issued against the petitioner was that warrants could not served upon the petitioner. Hence, even the procedure prescribed under Section 82 Cr.P.C has not been properly followed. Still further it is submitted that, by any means, a person who is already in State custody; cannot be declared a proclaimed person by availing any provision of Cr.P.C. It is further contended by counsel for the petitioner that the petitioner has no intention to flee from the course of justice. He intends to appear before the Trial Court. The only prayer is that the petitioner be protected from the arrest.

Notice of motion.

On the asking of the Court, Shri K.S.Aulakh, DAG, Punjab accepts notice on behalf of the State of Punjab and submits that he has no objection if the petitioner appears before the Trial Court

The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and punishments as are passed qua the accused. If the accused shows his sincere intention and desire to appear before the Court, then it would not be unjustified to protect him from being arrested.

In view of the above, the present petition is allowed and the impugned order is quashed subject to the petitioner appearing before the trial Court on or before 02.07.2019. It is further directed that in case, the petitioner so appears before the trial Court then the petitioner shall be released on bail on his furnishing bail bond/surety to the satisfaction of the Trial Court.

20th May, 2019

Shivani Kaushik

Whether speaking/reasoned

Whether Reportable

Yes/No

Yes/No

[RAJBIR SEHRAWAT]

JUDGE