

S.No.119

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

CRM-M-33627 of 2019 (O&M)

Date of Decision:15.10.2019

Ashish GuptaPetitioner

Vs.

State of HaryanaRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. G.S. Sandhu, Advocate
for the petitioner.

Rajbir Sehrawat, J.(Oral)

This is a petition seeking quashing of order dated 24.09.2018 passed by Chief Judicial Magistrate, Bhiwani in FIR No.37 dated 28.01.2014 registered under Sections 420, 467, 468, 471, 406, 120-B IPC at Police Station Civil Lines, Bhiwani, declaring the petitioner as proclaimed person.

It is contended by counsel for the petitioner that in this very case, the petitioner was earlier granted bail pending trial vide order dated 08.01.2016. Thereafter, the petitioner appeared before the trial Court regularly. However, the petitioner could not appear on 08.08.2017., therefore, the bail granted to the petitioner was cancelled and the warrants of arrest were issued against him. Still further, it is submitted that vide the impugned order dated 24.09.2018, the petitioner has been declared as a proclaimed person as well. Still further, it is submitted by the counsel for the petitioner that so far as the absence of the petitioner from the trial Court is concerned, the same was not intentional. The same had happened for the reasons beyond control of the petitioner. So far as the order declaring the petitioner as proclaimed person is concerned, it is submitted by the counsel

that the same has been passed in violation of the procedure prescribed under Section 82 Cr.P.C. Referring to the impugned order, counsel for the petitioner has submitted that the order itself shows that the petitioner was not even granted the mandatory 30 days' time after proclamation. Hence, it is submitted that the impugned order stands vitiated. Counsel for the petitioner has also submitted that the petitioner has no intention to flee from course of justice. He intends to appear before the trial Court to face further proceedings in accordance with law. The only prayer is that the petitioner be protected against his arrest.

Notice of motion.

Mr. Manoj Kumar Sangwan, DAG, Haryana, accepts notice on behalf of the State. Learned State Counsel does not have any objection if the petitioner appears before the trial Court to face further proceedings.

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.

However, in the present case, the petitioner has not been appearing before the trial Court since 08.08.2017. Therefore, even if the petitioner is to be protected against arrest believing his intention to appear before the Court then also petitioner deserves to be burdened with appropriate cost, commensurate with his non-appearance.

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 30.10.2019 and further subject to the payment of cost of Rs.1 lakh. The amount of cost is ordered to be deposited with Poor Patients Relief Fund, PGI, Chandigarh. It is further directed that in case the petitioner so appears before the trial Court on or before 30.10.2019; then he shall be released on bail on his furnishing bail bonds/ sureties to the satisfaction of the trial Court.

It is further clarified that the Court below shall entertain the application of the petitioner, for bail, only when he produces the receipt of the cost having been deposited, as ordered above.

October 15, 2019
renu

(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No