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

CRM-M-44340-2019

Date of Decision: 11.12.2019

Surinder Kumar and another

...Petitioners

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bhupinder Ghai, Advocate for the petitioners.
Mr. Hittan Nehra, Addl. A.G., Punjab.

ANIL KSHETARPAL, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure, seeking quashing of criminal prosecution initiated on registration of FIR No.9 dated 20.01.2011 registered under Sections 413, 420, 468 and 471 IPC and under Section 279, 411 and 120-B IPC (added later on) at Police Station Shimla Puri, District Ludhiana City.

Keeping in view the facts of the case, the Presiding Judge was called upon to explain as to how charges have not been framed even after a period of 8 years.

Following detailed report has been submitted while referring to the conduct of the accused:

- (1). *It is respectfully submitted that the FIR in the present case has been registered on 20.01.2011 at Police Station Shimlapuri, Ludhiana. As per record the report under Section 173 of Code of Criminal Procedure has been prepared on 16.4.2011 and the same was presented before the Court of Learned Judicial Magistrate Ist Class,*

Ludhiana on 20.4.2011. The Court of learned Judicial Magistrate Ist Class, Ludhiana has committed the case to the Court of Sessions vide order dated 03.4.2017.

(2). *It is respectfully submitted that as per the record the accused Jagsir Singh and Pawan were in custody, whereas the accused Surinder Kumar, Harkirat, Rohit Kumar, Gurmeet, Danny Kumar and Chanchal Singh were on bail at that time.*

(3). *For the first time the case was put up before the then learned Additional Sessions Judge (duty) on 15.4.2017 and it was ordered to be registered and adjourned to 29.4.2017 for further proceedings.*

(4). *On 28.4.2017 the accused Surinder Singh did not appear and his application for exemption from personal appearance was allowed with the direction that no further exemption shall be granted to accused Surinder Singh. The arguments on the charge were not advanced and an adjournment requested was allowed.*

(5). *On the next date i.e., 10.05.2017 the accused Surinder Kumar, Rohit Kumar and Danny Kumar were exempted from personal appearance with the direction that no further exemption shall be granted. Again arguments on the charge were not advanced and adjournment requested was allowed.*

(6). *Again on 24.05.2017 the accused Surinder Kumar did not appear and was exempted from personal appearance with the direction that no further exemption shall be granted. Again arguments on the charge were not advanced and adjournment requested was allowed.*

(7). *On 07.06.2017 the accused Pawan Kumar was not produced by the Jail authorities, whereas the accused Rohit Kumar was exempted from personal appearance with the direction that no further exemption shall be granted. Again arguments on the charge were not advanced and adjournment requested was allowed.*

(8). *On 12.7.2017 the accused Jagsir Singh and Pawan Kumar were not produced by the Jail authorities whereas the accused Rohit Kumar was exempted from personal appearance with the direction that no further exemption shall be granted. Again arguments on the charge were not advanced and adjournment requested was allowed. Again on 02.08.2017 the accused Jagsir Singh and Pawan Kumar were not produced by the Jail authorities whereas the accused Danny Kumar was exempted from personal appearance. Again arguments on the charge were not advanced and adjournment requested was allowed.*

(9). *On 16.08.2017 the accused Jagsir Singh and Pawan Kumar were not produced by the Jail authorities whereas the accused Chanchal Singh, Surinder Kumar and Rohit Kumar came present late and were warned to remain careful in future.*

The production warrants of accused Danny Kumar were ordered to be issued who was lodged at Central Jail, Bathinda.

(10.) *On 31.08.2017 the accused Jagsir Singh, Pawan Kumar and Danny Kumar were not produced and their production warrants were ordered to be issued. Again arguments on the charge were not advanced and adjournment requested was allowed.*

(11) *The accused Danny Kumar was on bail and appeared on 13.09.2017, on which date Jagsir Singh and Pawan Kumar were not produced and their production warrants were ordered to be issued. Again arguments on the charge were not advanced and adjournment requested was allowed. Again on 29.9.2017 and 13.10.2017 accused Jagsir Singh and Pawan Kumar were not produced and their production warrants were ordered to be issued. Again arguments on the charge were not advanced and adjournment requested was allowed. The accused Surinder Kumar and Rohit Kumar were also exempted from personal*

appearance for 13.10.2017 and again vide order dated 27.10.2017. The accused Jagsir Singh and Pawan Kumar were also not produced on 15.11.2017 and 29.11.2017.

(12) As per order dated 16.12.2017 all the accused were on bail. On the said date accused Surinder Singh and Danny were exempted from personal appearance and again arguments on the charge were not advanced and adjournment requested was allowed. On 16.01.2018 accused Rohit Kumar was exempted from personal appearance. At the same time, the accused Jagsir Singh absented and his bail order, bail/surety bonds were cancelled and Jagsir Singh was ordered to be summoned through non-bailable warrants of arrest for 17.2.2018.

A perusal of the above facts shall reveal that till 17.02.2018 the charges against the accused could not be framed as all the accused together were not present before the Court on any date. Either there was an exemption application moved on behalf of some of the accused or the accused in custody were not produced.

13. The case was received by transfer for the first time in this court on 17.2.2018, on which date the undersigned was availing joining time after being transferred to Ludhiana and the learned Additional Sessions Judge (Duty) adjourned the case to 16.03.2018.

14. On 16.03.2018 the non-bailable warrants of accused Jagsir Singh were ordered to be issued for 11.04.2018. An application was also filed to the effect that the accused No. 7-Danny is lodged at Central Jail, Delhi. Accordingly, production warrants of accused no.7-Danny were ordered to be issued for the next date.

15. On 11.04.2018 the accused Pawan Kumar was exempted from personal appearance. On the said date non-bailable warrants of arrest of accused Jagsir Singh were received back unexecuted and accused no. 7-Danny was also not produced. The non-bailable warrants of arrest of

accused Jagsir Singh and production warrants of accused no.7-Danny were ordered to be issued for 03.05.2018. Again vide order dated 03.05.2018 non-bailable warrants of arrest of accused Jagsir Singh and production warrants of accused Danny were ordered to be issued for 06.07.2018.

16. *On 06.07.2018 it was submitted that Jagsir Singh is lodged at Kapurtahala Jail, whereas accused no. 7-Danny was not produced. Three accused were exempted from personal appearance on that day.*

17. *On 06.08.2018 accused No. 7-Danny was produced in the Court, whereas accused no. 1-Jagsir Singh was not produced. Production warrants of accused Jagsir Singh were ordered to be issued to Kapurthala Jail for 04.09.2018.*

18. *On the next date i.e., 04.09.2018 accused Surinder Kumar was exempted from personal appearance. The accused present in the court submitted that accused no. 1 Jagsir Singh is not lodged in any jail and accordingly his non-bailable warrants were ordered to be issued for 25.9.2018.*

19. *On the next date i.e. on 25.9.2019 the undersigned was on leave and case was adjourned to 23.10.2018. In between on the application dated 04.10.2018 the accused Danny was brought from Central Jail no. 3, Tihar, New Delhi on 05.10.2018 and the application dated 04.10.2018 was disposed off by mentioning on the application that accused Danny is on bail in this case.*

20. *On 23.10.2018 the accused Surinder Kumar and Rohit Kumar did not appear and were exempted from personal appearance. Non-bailable warrants of arrests of accused no. 1 were again ordered to be issued for 30.11.2018. On 30.11.2018 the undersigned was on leave and the case was adjourned to 19.12.2018 for issuance of non-bailable warrants of arrest of accused no. 1.-Jagsir Singh and production of warrants of accused no. 5-Danny.*

21. *On 19.12.2018 the accused Danny appeared in the Court as he was on bail. The non-bailable warrants of arrest of accused Jagsir Singh were received back unexecuted. The case was adjourned to 06.02.2019 and non-bailable warrants of accused Jagsir Singh were ordered to be issued.*

22. *On 06.02.2019 it has been observed that non-bailable warrants of arrest of accused Jagsir Singh were not issued by the ahlmad. Accused No. 6 Pawan Kumar also did not appear on that date. Accordingly non-bailable warrants of arrest of accused No.1 Jagsir Singh and accused no. 6 Pawan Kumar were ordered to be issued for 07.03.2019.*

23. *On 07.03.2019 the accused Danny did not appear and was exempted from personal appearance. Warrants of arrest of accused no. 1-Jagsir Singh and accused No. 6-Pawan Kumar were received back unexecuted. At the same time it was submitted that accused no. 1-Jagsir Singh has died. The copy of the death certificate of accused no. 1-Jagsir Singh was ordered to be produced on 02.04.2019 for which date the warrants of arrest of accused no. 1-Jagsir singh and accused no. 6-Pawan Kumar were ordered to be issued along with notice to the sureties.*

24. *On 02.04.2019 the accused Surinder Kumar and Rohit Kumar were exempted from personal appearance. An application for exemption of Danny Kumar from personal appearance was declined and his bail order was cancelled and he was ordered to be summoned through non-bailable warrants of arrest for 06.05.2019. The death report of accused No. 1-Jagsir Singh was ordered to be called from the concerned police station. Warrants of arrest of accused no. 6-Pawan Kumar and notice to his surety was again ordered to be issued for next date.*

25. *On 06.05.2019 the death report of accused no. 1-Jagsir Singh was not received. Warrants of arrest of*

accused No. 6-Pawan Kumar and Danny Kumar were received back unexecuted. The same were ordered to be issued again along with notice to sureties for 17.07.2019.

26. *On 17.07.2019 the death report of accused no. 1-Jagsir Singh was received and as such proceedings against him stands abated. Warrants of arrests of accused no. 6-Pawan Kumar and accused no. 7-Danny Kumar were again ordered to be issued for 08.08.2019.*

27. *On 08.08.2019 accused No.2-Harkirat Singh and accused no. 9-Rohit Kumar were exempted from personal appearance. Warrants of arrest of accused no. 6-Pawan Kumar and accused no. 7-Danny Kumar were received back unexecuted and the same were again ordered to be issued for 17.09.2019.*

28. *Again on 17.09.2019 the non-bailable warrants of arrest of accused no.6-Pawan Kumar and accused no. 7-Danny Kumar were received back unexecuted and were again ordered to be issued for 10.10.2019.*

29. *On 10.10.2019 the non-bailable warrants of arrest of accused no. 6-Pawan Kumar and accused no. 7-Danny Kumar were received back unexecuted. The warrants were again ordered to be issued with the direction that if the warrants are not executed, the SHO Police Station Shimlauri and Tamili shall personally appear in the Court on the next date i.e. 18.11.2019.*

30. *On 18.11.2019 the accused Rohit Kumar was exempted from personal appearance. The warrants of arrest of accused no. 6-Pawan Kumar and accused no. 7-Danny Kumar were received back unexecuted. This court on being satisfied that accused no. 6-Pawan Kumar and accused no. 7-Danny Kumar were absconding has now ordered the accused no. 6-Pawan Kumar and accused no. 7-Danny Kumar to be summoned through proclamation under Section 82 Cr.P.C. for 09.01.2020.”*

Keeping in view the conduct of the petitioners, this Court is not

inclined to exercise the powers under Section 482 Cr.P.C.

Dismissed.

11.12.2019
mks

(ANIL KSHETARPAL)
JUDGE

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