

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

214

CRM-M-15825 of 2020(O & M)
Date of decision :-03.12.2020

Deepak Kapoor

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Gagandeep Singh Virk, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, AAG, Punjab for the respondent-State.

SUVIR SEHGAL, J.

This Court has been convened through video conferencing on account of outbreak of Coronavirus (Covid-19) pandemic.

CRM-29415-2020

Prayer in the application is for placing on record order dated 22.10.2020 passed by the trial Court as Annexure A-3.

Notice of the application to the non-applicants.

On asking of the Court, Mr. Harsimar Singh Sitta, AAG, Punjab accepts notice on behalf of the respondent-State. He does not have any objection to the application being accepted.

Application is allowed. Order, Annexure A-3, is taken on record.

Main Case

Instant petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of order dated 03.11.2017, Annexure P-5, vide which the petitioner has been declared as Proclaimed Person by the Court of JMIC, Ludhiana in FIR No.32 dated 28.01.2010 registered under Sections 420, 468, 471, 198, 197, 120-B IPC at Police Station Division No.5, Ludhiana, Annexure P-1.

Shorn of unnecessary details, the facts relevant for the disposal of this petition are that the petitioner was named as one of the accused in the above-mentioned FIR. After the investigation was completed, challan was presented on 18.07.2012 and the charges were framed on 29.01.2013. The petitioner, who was on bail, continued to appear regularly before the trial Court till 24.04.2017. However, as the petitioner defaulted in appearance on account of poor health of his mother, the trial Court cancelled his bail bonds and surety and issued non-bailable warrants to secure his presence. When the non-bailable warrants were not executed, proclamation was issued and the petitioner was declared as a proclaimed person on 16.11.2017, Annexure P-5, which order is being impugned here.

Counsel for the petitioner submits that the non-appearance of the petitioner was on account of the health condition of his mother. He has referred to the medical slip, Annexure P-2, to substantiate this fact. He submits that the proclamation under Section 82 of the Code of Criminal Procedure has not been published in the manner prescribed under the Code and the petitioner was never served before being declared as a proclaimed offender. Still further, it is his submission that in pursuance to the interim order passed by this Court, the petitioner has already surrendered before the trial Court and has joined the proceedings, therefore, the petitioner can no longer be called an absconder.

Counsel for the State has opposed the petition and argued that the petitioner was well aware of the pendency of the criminal proceedings and deliberately evaded the process of law. He submits that after following the due procedure, the proclamation was effected and the petitioner was declared a proclaimed person. Therefore, he is not entitled to any relief from this Court.

I have considered the rival submissions of the counsel and examined the paper book with their able assistance.

A perusal of the zimini orders, Annexure P-3, show that the petitioner was granted bail by the trial Court vide order dated 18.07.2012. He was appearing regularly before the trial Court till 24.04.2017 when he did not appear due to the medical condition of his mother. He was later informed by the clerk of the counsel that the criminal case against him has been disposed of. Zimini orders show that non-bailable warrants were issued to secure the presence of the petitioner and when they remain unexecuted, by order dated 01.07.2017, the Court ordered the issuance of proclamation under Section 82 of the Code of Criminal Procedure for causing the appearance of the petitioner for 20.07.2020. The serving official made the following statement before the trial Court on 03.11.2017, Annexure P-4.

“Stated that I was entrusted proclamation under Section 82 Cr.P.C. on 18.07.2017 for causing appearance of accused Deepak Kumar son of Raj Kumar R/O 993, Street Number 7 Muradpura, Gill Road, District Ludhiana and the order Ex.PA. I had pasted one copy of proclamation in the Court Complex. I visited the residence of the accused. I tried to locate him but accused was not traceable. A copy of proclamation was

affixed outside the door of house of accused and another copy was pasted at public place on 13.07.2017. I have prepared my report in this regard i.e.Ex.PB.”

From the above statement of the official, it is apparent that the affixation of the proclamation could not possibly have been effected prior to the entrustment of the proclamation to him. Still further, the issuance of proclamation on 01.07.2017 for 20.07.2017 does not meet the mandate of Section 82 of the Code of Criminal Procedure as the period is less than the prescribed period of 30 days. Consequently, this Court has no hesitation in holding that the impugned order deserves to be set aside.

While issuing notice of motion, this Court on 19.06.2020 directed the petitioner to surrender before the trial Court within a period of one month and it was directed that upon surrender if the petitioner applies for bail, his application shall be decided by the trial Court within a period of 10 days. The period of surrender was extended by this Court for another period of 30 days vide order dated 08.10.2020. In pursuance to the said orders, the petitioner surrendered before the trial Court on 22.10.2020 and was granted bail. This is apparent from the order, Annexure A-3, passed by the trial Court. The objective of Section 82 of the Code of Criminal Procedure is to secure the presence of the accused. As such, the purpose of proceedings under Section 82 has been achieved. For this reason, also, the impugned order dated 03.11.2017, Annexure P-5, whereby the petitioner has been declared as proclaimed person deserves to be quashed.

The petition is accordingly allowed. The impugned order dated 03.11.2017, Annexure P-5, is quashed, subject to the petitioner depositing a sum of Rs.10,000/- as costs with the PGIMER Poor Patient Welfare Fund, Sector 12, Chandigarh within a period of four weeks' from the date of

receipt of the certified copy of the order. Since the petitioner has already joined the proceedings, he shall file an undertaking before the trial Court to the effect that he shall appear before the trial Court on all dates, unless exempted and that he shall not cause any delay in the proceedings. Upon breach of any condition imposed herein, the prosecution would be at liberty to seek cancellation of bail.

03.12.2020
sheetal

(SUVIR SEHGAL)
JUDGE

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