

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

CRM-M-34479 of 2020

DATE OF DECISION :- November 27, 2020

Harjinder Singh

...Petitioner

Versus

Sukhdeep Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAN

Present:- Mr. Vishavjeet Singh Rishi, Advocate for the petitioner.

Mr. V.S. Mand, Advocate for respondent No. 1.

Mr. J.S. Ghumman, DAG, Punjab.

The case has been taken up through Video Conferencing.

Petitioner Harjinder Singh was arrayed as one of the accused by his wife Sukhdeep Kaur who had filed a private complainant under Sections 406, 498A, 323, 341, 324, 120-B, 506 IPC in the Court of Judicial Magistrate 1st Class, Ludhiana. On presentation of such complaint the accused including the present petitioner were summoned. The petitioner was summoned through proclamation under Section 82 Cr.P.C. which was duly published, however, he did not appear in the Court within stipulated period, as such was declared a proclaimed person vide order dated 20.7.2019. He had approached the Court of Sessions at Ludhiana seeking pre-arrest bail. His such application was assigned to Additional Sessions Judge, Ludhiana who vide order dated 1.9.2020 had dismissed the application, as such the petitioner has knocked at the door of this Court praying for grant of similar

relief. Notice of that petition has been issued to the State.

Learned counsel for the petitioner has contended that petitioner was wrongly declared as a proclaimed person without adopting proper procedure, inasmuch as neither his personal service was got effected nor warrants of arrest were issued against him and straightway proclamation under Section 82 Cr.P.C. was ordered to be published against the present petitioner. He has further contended that the matter has since been compromised between the parties and marriage between the parties has been dissolved by means of decree by mutual consent in terms of Section 13B of the Hindu Marriage Act vide judgment dated 21.7.2020 (Annexure P3), therefore, he be granted concession of pre-arrest bail. Learned counsel for the complainant admits the factum of compromise between the parties saying that he does not oppose the petition.

I have learned counsel for the petitioner, learned counsel for the complainant and learned State counsel besides going through the record.

In the judgment State of Madhya Pradesh versus Pradeep Sharma 2014(1) R.C.R. (Criminal) 269 the Hon'ble Supreme Court of India has observed that when an accused is absconding and has been declared as a proclaimed offender in terms of Section 82 Cr.P.C. then such accused should not be granted anticipatory bail. Further more in a judgment passed by a coordinate Bench in case titled Mehnga Singh versus State of Punjab 2002(1) CLJ (Criminal) 302 it was observed that when an accused has been declared as a proclaimed offender petition against the order under Section 482 Cr.P.C. is not maintainable. The accused should first move the Court who had declared him a proclaimed offender and even an objection against validity of proclamation is required to be raised in the first instance before

the Court which issued the proclamation and power under Section 482 Cr.P.C. is not to be exercised in favour of a person who is absconding or avoiding service.

Under the circumstances, the instant petition is not maintainable and is dismissed accordingly. The petitioner is directed to surrender before the trial Magistrate within seven days. On his doing so and moving an application for regular bail, the same be decided expeditiously keeping in view the fact that the dispute between the parties already stands settled.

A copy of this order be sent to the learned trial Magistrate for information and necessary compliance.

(H.S. MADAAN)
JUDGE

November 27, 2020

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No