

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

Date of Decision: January 31, 2020

1. CRM-M-47945-2019 (O&M)

Gurjinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

2. CRM-M-47831-2019 (O&M)

Parvinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

3.

CRM-M-21356-2019 (O&M)

Parvinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

4. CRM-M-16458-2019 (O&M)

Gurjinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. GPS Bal, Advocate
for the petitioner in CRM-M-47495-2019.
and in CRM-M-16458-2019.

Mr. Ravish Bansal, Advocate
for the petitioner in CRM-M-47831-2019 and
CRM-M-21356-2019

Mr. Davinder Bir Singh, D.A.G., Punjab.

Mr. Sandeep Gahlawat, Advocate
for the complainant.

JAISHREE THAKUR, J. (Oral)

1. By this common order, this Court proposes to dispose of all above-mentioned four petitions. For brevity, the facts have been extracted from CRM-M- 47945-2019.

2. The petitioner(s) herein are seeking to challenge the order dated 03.10.2019 as passed by the Special Court at SAS Nagar, Mohali, wherein the petitioner(s) herein have been declared as proclaimed offender as well as in two petitions seeking grant of anticipatory bail on the ground that they have been summoned under Section 319 Cr.P.C. to face trial under FIR No. 230 dated 29.11.2017, registered under Sections 328, 363, 376-D IPC at Police Station Lalru, District SAS Nagar.

3. Learned counsel for the petitioners would contend that an FIR got registered at the behest of the complainant on 29.11.2017 in which she has raised allegations that an offence of rape had been committed upon her by two of the petitioners herein, as well as by the third one namely Gursewak Singh (who has since been arrested and is in custody). Learned counsel for the petitioners would urge that initially a DDR had been got registered on the statement of the father of the prosecutrix wherein it has been written that his daughter is missing and has gone somewhere with a sum of ₹2 lacs. After the statement had been recorded, the daughter of the

complainant, who is also the prosecutrix, had been recovered in the custody of Gursewak Singh and thereafter she was sent back home by the police. It is only after a period of two weeks i.e. on 28.11.2017, she was admitted in a hospital, complaining for a stomach ache and thereafter a *ruqqa* was sent to the police by the hospital authorities. While in hospital, the police took the statement of the prosecutrix on 29.11.2017, which led to the FIR being registered under various sections including Section 376 IPC. On the registration of the said FIR, the matter was investigated by the police who took into account the call locations and statements of several witnesses and an FIR was registered only against Gursewak Singh. After the statements had been recorded of the prosecutrix in Court, an application under Section 319 Cr.P.C. was filed, in which both the petitioners herein were summoned. On coming to know about the summoning, the petitioners herein approached the Addl. Sessions Court seeking anticipatory bail, which was rejected and consequently thereafter, they approached this Court by way of filing a petition for anticipatory bail in the month of May, 2019. During the pendency of the proceedings before this Court seeking grant of anticipatory bail, both the petitioners herein have been declared as proclaimed offender vide impugned order dated 03.10.2019.

4. Learned counsel for the petitioners herein further contends that there is non compliance of Section 82 Cr.P.C., while further arguing that they were neither absconding nor had willingly concealed themselves to evade their arrest. In fact they were following the legal remedy as available to them under law, by approaching the Addl. Sessions Judge, for grant of anticipatory bail, which got rejected and immediately they approached the High Court seeking interim protection. In this regard, learned counsel

placed reliance on the judgment rendered in '*Vivek Gaur vs. Naresh Kumar Karotia, 2013 (6) RCR(Criminal) 1495*', wherein it has been held that in similar circumstances, where a petitioner who had not been made an accused during an investigation filed a petition for grant of anticipatory bail, which was pending, could not be held to be a proclaimed offender or a person who is evading arrest.

5. Per contra, learned counsel appearing on behalf of the complainant and the respondent-State would argue that the petitioner namely Gurjinder Singh in CRM-M-47945-2019 and CRM-M-16458-2019 was the real brother of Gursewak Singh and had full knowledge of the proceedings that had been initiated against him and therefore, should have surrendered the minute he had been summoned under Section 319 Cr.P.C. It is also argued that the investigation that was done by the police was shoddy as once the statement of the prosecutrix is available on the record, in which a categorical statement had been made about commission of offence, hence the petitioners should have been arrested.

6. I have heard learned counsel for the parties and gone through the judgments referred before this Court, and am of the opinion that there is non-compliance of Section 82 Cr.P.C., which reads as under :

82. Proclamation for person absconding

1. xx xx xx xx
2. *The proclamation shall be published as follows:*
 - (i)(a) *It shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;*
 - (b) *It shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or to some conspicuous place of such town or village;*

(c) A copy thereof shall be affixed to some conspicuous part of the Court house,

7. A perusal of Section 82(2) Cr. P.C. lays down the procedure publishing a written proclamation which clearly states that the proclamation has to be wrote in some conspicuous part of the town/village where such person ordinarily resides. There has to be a fixation of the said notice to some conspicuous part of the house or home-stead in which such person ordinarily resides or some conspicuous place of town/village and thirdly a copy thereof shall be fixed to a conspicuous part of the Court premises. A reading of the endorsement of constable Kanwar Randeep Singh, PP Lehli, of Police Station Lalru dated 29.08.2019 on the copy of proclamation shows that the notice had been posted '*out the house of the accused in Village Lehli at conspicuous place and has also been posted outside the shops of Barinder Singh son of Balbir Singh and the board of police station*'.

8. This publication would not be in consonance with Section 82 Cr.P.C. as there is non-compliance of Section 82 (2)(i)(a to c) as there is no mention that the notice had been affixed at some conspicuous part of the town/village where the petitioners reside nor was there any pasting outside the Court house. Section 82(2) (i) (a) (b)(c) requires strict compliance since the provisions are mandatory in nature.

9. Strangely enough, the Special Court, SAS Nagar, Mohali has come to note that one copy of each notice had been pasted at public area i.e. bus- stand of Village Lehli which is also not in-consonance with the noting of the Process Server, neither is there any mention that the notice had been pasted on the Notice Board of the Court concerned. Consequently, this

Court is of the opinion that there is non-compliance of Section 82 Cr.P.C. which would necessitate the setting aside of the proclamation order dated 03.10.2019.

10. Since the petitioners have already faced investigation, be it shoddy, as submitted by learned counsel for the complainant, they have been summoned under Section 319 Cr. P.C. and would have to face trial therein, Consequently, after setting aside the order declaring the petitioners as P.O., the petitioners herein are directed to appear before the trial Court and face trial.

11. Needless to say that the arrest of the petitioners herein is stayed limited to enable them to approach the summoning Court and to appear before it on the date fixed i.e. 11.02.2020 by furnishing requisite bail bonds to the satisfaction of the trial Court and shall abide by the conditions incorporated under Section 438(2) Cr.P.C.

12. The petitions stand disposed of accordingly.

January 31, 2020

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No