

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

CRM-M-598 of 2021 (O&M)
Date of Decision:-14.1.2021

Ranjit Kaur ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Navkiran Singh, Advocate for the petitioner.

(proceedings conducted through video conferencing)

* * * * *

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 13.8.2020 (Annexure P-3) passed by JMIC, Tarn Taran in respect of FIR No. 50 dated 24.2.2020, Police Station Sadar Tarn Taran, District Tarn Taran, vide which the petitioner has been declared a Proclaimed Offender in terms of Section 82 Cr.P.C.
2. The learned counsel for the petitioner has submitted that the trial Court, while passing the impugned order has proceeded in a mechanical manner without following proper procedure. It has been submitted that the non-bailable warrants, pursuant to which the proclamation proceedings came to be initiated, were issued by the Magistrate simply on asking of police whereas the Court had no jurisdiction to issue warrants when the matter was still at the stage of investigation. The learned counsel submits that Section 70 Cr.P.C. and also Section 73 Cr.P.C. cannot be used for the purpose of aiding or assisting the investigation by securing presence of accused so as to

enable the police to interrogate him. The learned counsel in order hammer forth his aforesaid submission places reliance upon a judgment of this Court rendered in *Gurjeet Singh Johar versus State of Punjab and another 2020(1) RCR (Criminal) 344* and also on a judgment of Hon'ble Supreme Court reported as *State through CBI versus Dawood Ibrahim Kaskar 2000 (1) SCC 438*.

3. I have heard Sh. Navkiran Singh, learned counsel for the petitioner. Some facts need to be noticed to consider the aforesaid submissions. The FIR in the instant case was lodged at the instance of Palwinder Kaur against five accused who are specifically named including the present petitioner Ranjit Kaur and against nine unknown persons. It is alleged in the FIR that there is a dispute amongst her husband's family pertaining to land and that on 24.2.2020 her husband Baldev Singh was attacked by her brother-in-law Sukhdev Singh armed with a '*gun*', Manjinder Singh armed with a '*pistol*', Amanat armed with a '*pistol*', Ranjit Kaur armed with a '*baseball bat*', Kuldeep Singh armed with a '*gun*', Kashmir Singh armed with a '*gun*', Hoshiar Singh armed with a '*gun*' and that her father-in-law was also standing nearby who had gestured towards complainant's husband Baldev Singh. It is further alleged that another 8-9 persons were also present there with muffled faces and who were also armed with '*guns*' and '*pistols*'. Ranjit Kaur (petitioner) is alleged to have raised a *lalkara* exhorting the co-accused to teach Baldev Singh a lesson for raising demand of land and upon which the accused Sukhdev Singh, Amanat Singh, Manjinder Singh, Kashmir Singh, Kuldeep Singh and Hoshiar Singh started firing at Baldev Singh. The

unknown persons dragged Baldev Singh by hair and gave blows with butts of their guns while Ranjit Kaur gave blows to him with baseball bat.

4. The petitioner, being involved in a non-bailable and cognizable offence of murder, the police would be competent to arrest her even without warrants. However, since the police was unable to arrest the accused even after three months of lodging of FIR despite having raided all such places where there was any likelihood of their presence, an application dated 26.5.2020 (Annexure P-4) was moved before the Illaqa Magistrate for issuance of non-bailable warrants. Non-bailable warrants were accordingly issued but it appears that the warrants remained unexecuted and consequently proclamation proceedings were initiated leading to passing of impugned order dated 13.8.2020 (Annexure P-3).
5. The Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') lays down the complete procedure right from lodging of FIR upto arrest and trial of a person accused of committing an offence. Chapter VI of the Code titled "PROCESSES TO COMPEL APPEARANCE" deals with issuance of summons and warrants and also proclamation proceedings. It is apposite to bear in mind the relevant provisions of Sections 70 to 73 and 82 of the Code which pertain to issuance of warrants and proclamation proceedings. The same are as under:

"70. Form of warrant of arrest and duration. -

- (1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.
- (2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

71. Power to direct security to be taken. -

- (1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.
- (2) The endorsement shall state -
 - (a) the number of sureties;
 - (b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound;
 - (c) the time at which he is to attend before the Court.
- (3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

72. Warrant to whom directed. -

- (1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.
- (2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

73. Warrant may be directed to any person. -

- (1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.
- (2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.
- (3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.

82. Proclamation for person absconding. -

- (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.
- (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 homestead 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;
 - (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.
 - (3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this Section have been complied with, and that the proclamation was published on such day.
 - (4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459, or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.
 - (5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1)."
6. The learned counsel for the petitioner assails order dated 13.8.2020 (Annexure P-3), mainly while relying upon Gurjeet Singh Johar's case (Supra) and Dawood Ibrahim's case (Supra), has vehemently argued that since by way of issuance of non-bailable warrants and the proclamation, the Illaqa Magistrate has virtually taken a step to aid the investigation of the police, the same would be hit by ratio of judgment of Hon'ble Supreme Court in Dawood Ibrahim's case (Supra) wherein it has been held that a warrant cannot be issued for production of a person in the aid of investigation agency. The learned counsel refers to Para 25 of the said judgment which reads as follows :-

25. Now that we have found that Section 73 the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise

of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and is evading arrest, we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 430 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167(3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the Court solely for the production of the accused before the police in aid of investigation.”

7. I have perused the above cited judgment. Though, in the cited judgment it was contended on behalf of accused that the police during investigation could not seek help of a Magistrate for the purpose of issuance of a warrant of arrest in aid of investigation and that it is only post cognizance that a warrant of arrest could be issued in terms of Section 204 of the Code, but a perusal of entire judgment shows that this is not the import of the judgment. Rather, Hon'ble Supreme Court has held to the contrary. Para 22 to 24 of the cited judgment throw ample light on the view taken by Hon'ble Apex Court therein which read as follows:

- “22. That Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code. As already noticed under this Section a police officer can investigate into a non-cognizable case with the order of a Magistrate and may exercise the same powers in respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest without warrant. If with the order of a Magistrate the police starts investigation into a non-cognizable and non-bailable offence, (like Section 466 or 467 (Part I) of the Indian Penal Code) and if during investigation the Investigating Officer intends to arrest the person accused of the offence he has to seek for and obtain a warrant of arrest from the Magistrate. If the accused evade the arrest, the only course left open to the Investigating Officer to ensure his presence would be to ask the Magistrate to invoke his powers under Section 73 and thereafter those relating to proclamation and attachment. In such an eventuality, the Magistrate can legitimately exercise his powers under Section 73, for the person to be apprehended is 'accused of a non-bailable offence and is evading arrest.'
23. Another factor which clearly indicates that Section 73 of the Code gives a power to the Magistrate to issue warrant of arrest and that too during investigation is evident from the provisions of part 'C' of Chapter VI of the Code, which we have earlier adverted to. Needless to say the provisions of proclamation and attachment as envisaged therein is to compel the appearance of a person who is evading arrest. Now, the power of issuing a proclamation under Section 82 (quoted earlier) can be exercised by a Court only in respect of a person 'against whom a warrant has been issued by it'. In other words, unless the Court issues a warrant the provisions of Section 82, and the other Sections that follow in that part, cannot be invoked in a situation where in spite of its best efforts the police cannot arrest a person under Section 41. Resultantly, if it has to take the coercive measures for the apprehension of such a person it has to approach the Court to issue warrant of arrest under Section 73; and if need be to invoke the provisions of part 'C' of Chapter VI. [Section 8(3) in case the person is accused of an offence under TADA].
24. Lastly, we may refer to Section 90, which appears in part 'D' of Chapter VI of the Code and expressly states that the provisions contained in the Chapter relating to a summon and warrant, and their issue, service and execution shall, so far as may be, apply to every summons and every warrants of arrest issued under the Code. Therefore, when a Court issues a warrant of arrest,

say under Section 155 of the Code, any steps that it may have to subsequently take relating to that warrant of arrest can only be under Chapter VI.”

8. It is evident from the above referred paras that Hon'ble Apex Court has duly recognised the competence of the Magistrate to issue warrants of arrest. Para 25 of the aforesaid judgment, which has been referred to by learned counsel for the petitioner, certainly cannot be interpreted to mean that a Court is powerless to issue a warrant for compelling presence of an accused during the course of investigation in case sufficient grounds are made out for the same upon an appropriate application moved before it.
9. Gurjeet Singh Johar's case (Supra) will also be not of much assistance to the petitioner. In the said case, this Court had noticed the casual manner in which the warrants were sought to be issued without there being sufficient grounds for the same. Para 15 of the said judgment wherein the distinct factual position is noticed reads as follows.

“15. Coming to the facts of the present case, undisputedly, the petitioner has not been arrested by the police despite having power to arrest him without warrant. Therefore, there is nothing on record of the present petition; showing whether the investigating officer was ever satisfied qua the requirement of the petitioner to be arrested or not. This court is presented with only an application moved by the police officer before the Magistrate; seeking issuance of warrant against the petitioner. The said application is silent qua any reason, which requires assistance from the court for arresting the petitioner. The application does not specify whatever obstacles, which were preventing the investigating officer from arresting the accused/petitioner without the aid of the warrant. Not only this, no reason, whatsoever, has been spelt out in the application, even qua the requirements of arrest as mentioned in Section 41 Cr.P.C, to justify arrest of the petitioner, except to say that the petitioner is evading arrest. It is upon this application that the impugned warrants of arrest have been issued against the petitioner.”

10. It was in the above mentioned circumstances of lack of sufficient grounds that the Court held that the warrants should not be issued in a routine manner by Court. While holding so, this Court took notice of the general trend of the police in getting the accused declared proclaimed offenders so as to avoid its responsibility to carry out the investigation. The relevant extract from the said judgment reads as follows :-

“14. This court also finds that more often then not, the police use the power of the Magistrate to issue warrant of arrest against an accused, only as a tool to avoid its responsibility to carry out the investigation to the logical end; and only for the purpose of getting such an accused declared as proclaimed offender. This methodology is normally adopted by the police just to get rid of the responsibility of putting a report before the Magistrate qua investigation, which otherwise is a mandate of law cast upon the police, or even to avoid arresting an accused in inconvenient cases or inconvenient circumstances. As a result, lots of persons are got declared as proclaimed offenders; and forgotten altogether by the police thereafter. Hence, as observed above, this court is also of the view that before the Magistrate/court has taken cognizance of any offence, the power of issuance of warrants of arrest under any provision of Cr.P.C., on an application of a police officer, cannot be invoked by the Magistrate as a routine matter.”

11. It was never held in Gurjeet Singh Johar's case (Supra) that there is any absolute bar for exercising the said discretion. The only requirement highlighted therein is that such warrants should not be issued in a perfunctory manner and should be issued only if the circumstances justify exercise of such discretion which has the ramifications of depriving a person of his liberty. There is certainly no dispute to the said proposition of law. There is no denial to the fact that the liberty of an individual is precious but at the same time in an orderly society maintaining law & order is equally important. Arrest should be the last option and it should be resorted to when

it is indispensable in the interest of proper investigation. The Court must carefully examine the entire available record and the allegations directly attributed to the accused before proceeding to order his arrest. Hon'ble Apex Court in Inder Mohan Goswami v. State of Uttaranchal 2007 (12) SCC 1, while laying down guidelines for issuance of non-bailable warrants held as under:

“47. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

48. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the Public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued

49. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

- * it is reasonable to believe that the person will not voluntarily appear in court; or
- * the police authorities are unable to find the person to serve him with a summon; or
- * it is considered that the person could harm someone if not placed into custody immediately.”

12. Reverting back to facts of the instant case, a perusal of FIR indicates that the petitioner is not only specifically named therein but a specific role has also been attributed to her. The question as to whether she has been falsely nominated therein cannot be answered at this stage as it would be ascertained after evidence is collected by the police. Since the allegations

pertain to a cognizable and non-bailable offence and the petitioner could not be arrested despite the police having checked at all possible places, the application dated 26.5.2020 (Annexure P-4) was filed for issuance of non-bailable warrants. After noticing the allegations as levelled in FIR, the following prayer has been made in the concluding para of the application Annexure P-4:

“..... That FIR was registered and investigation was started by me that after inspecting the spot the dead body was handed over to the heirs after post mortem and to arrest the accused persons, their relatives and hiding spots were raided and for arrest, technical investigation was also initiated but till now no clue could be find regarding the accused persons through every possible attempt was made to arrest the accused persons but it was not successful and against the accused P.O. action is to be started. It is therefore prayed that against the above mentioned Sukhdev Singh, Manjinder Singh, Ranjit Kaur, Amanat Singh and Jagtar Singh residents of Kot Jaspat(Bakipur), non-bailable warrants be issued so that challan could be filed in the Hon'ble Court after conclusion of proceedings under section 82 Cr.P.C.”

13. The aforesaid extract would show that the police had made efforts for tracing the accused and had raided all the possible places where the accused could be found including the residences of the relatives and some technical investigation is also stated to have been conducted and it was thereafter upon the accused not having been traced that the said application dated 26.5.2020 was filed. It goes without saying that for the purpose of investigation the presence of the accused is of utmost importance so as to

know about his stand in the matter in case he has any explanation to offer in respect of the allegations. Interrogation, custodial or otherwise, is an invaluable tool with the police. The Court certainly has no role to play therein in such interrogation or investigation. However, the process of securing the presence of a person against whom there is some suspicion of having committed any offence cannot be said to be either interference with investigation or can be said to be any aid to the investigation.

14. A perusal of Section 82 of the Code shows that the Court can proceed to declare a person as a Proclaimed Offender only upon issuance of warrants by the 'Court' itself and upon finding that the accused is evading execution of such warrants. In other words, although even a police officer may be competent to effect arrest in cognizable case without obtaining a warrant but the mere report of a police officer that he has been unsuccessful in effecting arrest is itself not sufficient for declaring a person as Proclaimed Offender. It is only pursuant to issuance of warrants by 'Court' and the evasion by accused of execution of such warrants which could lead to declaration of such person as a Proclaimed Offender. It is for this purpose that the investigating officer is required to move an application to the Court for issuance of warrants before seeking such person to be declared as a Proclaimed Offender. To give a narrow interpretation to Sections 70 or 73 of the Code that the Court cannot issue warrants for securing presence of an accused during the course of investigation would militate against the scheme of the Code and would rather rendered the provisions of Section 82 of the Code otiose as far as cases under investigation are concerned as the Court would not be able to resort to coercive measures for compelling appearance

in such cases when it is most required. The number of persons who abscond immediately after commission of offences is much higher than those who abscond after getting bail.

15. Thus, non-bailable warrants can be issued for procuring attendance of a person before the Court and on police remand being granted, investigation can be carried out from such accused. The petitioner herein has been evading her arrest at the hands of the police and has also evaded execution of warrants for her arrest issued by the Court. Thus, the Court can proceed to issue proclamation under Section 82 of the Code. Issuance of non-bailable warrants by the Court, being *sine-qua-non* for initiation of proceedings under Section 82 of the Code, the Court was fully competent to issue non-bailable warrants. No infirmity could be pointed out as regards the procedure adopted by the Magistrate for declaring the petitioner as Proclaimed Offender. While declaring a Proclaimed Offender, a lengthy detailed order is not required to be passed and it is the material facts as regards compliance of procedure which are required to be noticed before proceeding to pass an order under Section 82(4) of the Code. The satisfaction of the Court for issuance of proclamation would be recorded when an order initiating proclamation proceedings is passed under Section 82(1) of the Code. The learned trial Court in its impugned order (Annexure P-3), has specifically recorded that despite a period of 30 days having expired after issuance of proclamation and despite the matter having been called several times during the day, none had appeared. Consequently, the petitioner was declared a proclaimed offender. As such, in view of the aforesaid discussion, this Court does not find any ground for

setting aside the impugned order dated 13.8.2020 (Annexure P-3) and the same is hereby affirmed. The petition is sans merits and is dismissed.

16. However, in case the petitioner chooses to surrender before the trial Court within two weeks from today and moves an application for grant of regular bail, the trial Court shall endeavour to dispose off the same expeditiously, preferably within a period of 10 days from filing of such application provided the present circumstances of spread of pandemic do not pose any hinderance for expeditious disposal.

14.1.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No