

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 3401 of 2020 (O&M)
Date of Decision: 26.2.2021

Kuldeep Singh @ Fauji

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. J.S.Gill, Advocate and
Mr. Jaspal Pannu, Advocate
for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

Mr. Deepak Gupta, Advocate
for respondent No. 2.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

This is a petition under Section 482 Cr.P.C. for quashing of order dated 05.4.2019 (Annexure P-5) passed by learned Additional Sessions Judge, Tarn Taran vide which the petitioner has been declared a proclaimed offender in case FIR No. 38 dated 18.3.2018 under Sections 307, 341, 148, 149 IPC and Sections 25 and 27 of the Arms Act, 1959 (Section 302 IPC was added and Sections 307, 148, 149 IPC were deleted later on), registered at Police Station Bhikhiwind, District Tarn Taran.

Learned counsel for the petitioner submits that vide order dated 20.2.2019, proclamation proceedings under Section 82 Cr.P.C. were initiated against the petitioner and the case was adjourned to 13.3.2019. On

03.3.2019, the executing person affixed the proclamation notice outside the

house of the petitioner mentioning the date before the Court as 13.3.2019. On 13.3.2019, the trial Court observed that since the statutory period of 30 days had not elapsed and accordingly, adjourned the case to 05.4.2019. On the said date i.e. 05.4.2019, the petitioner was declared proclaimed offender. Learned counsel further submits that in the present case, the mandatory period of 30 days had not elapsed as on 13.3.2019 and moreover, the petitioner had no occasion to know that the case had been adjourned from 13.3.2019 to 5.4.2019. In support of his arguments, learned counsel has placed reliance on ***Ashok Kumar versus State of Haryana and another 2013 (4) R.CR. (Criminal) 550.***

On the other hand, learned counsel for respondent No. 2 submits that in the present case, proclamation proceedings were initiated against the petitioner on 20.2.2019 and the case was initially adjourned to 13.3.2019 and in order to complete the 30 days' statutory period, the case was further adjourned to 5.4.2019 and thus, the statutory period of 30 days had been granted to the petitioner to appear before the Court below. He has placed reliance upon ***Savitaben Govindbhai versus State of Gujarat 2004(4) RCR (Criminal) 830*** and ***Sunil Kumar versus State 2003(1) CLR 38.***

Learned counsel for respondent No. 2 while banking upon these judgments submits that, the petitioner be directed to appear before the trial Court on a specific date to face the trial.

Admittedly, when the case was taken up by the trial Court on 13.3.2019, the mandatory period of 30 days did not elapse as the proclamation notice was affixed outside the house of the petitioner on 03.3.2019 and accordingly, the case was adjourned to 05.4.2019, which as

per the petitioner had not been in his knowledge. Thus, the said ground can be held to be sufficient for non-appearance of the petitioner before the trial Court on 05.4.2019, when he was declared proclaimed offender.

The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and punishments as are passed qua the accused. If the accused shows his sincere intention and desire to appear before the Court, then it would not be unjustified to protect him from being arrested.

Keeping in view the above, the petition is allowed. Order dated 05.4.2019 (Annexure P-5) is set aside. The petitioner is directed to surrender before the trial Court on 15.3.2021 and move an application for regular bail, which would be decided by the trial Court within a week, in accordance with law.

(HARNARESH SINGH GILL)
JUDGE

February 26, 2021
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No