

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(114)

CRM-M-8301-2021 (O&M)

Date of decision: 17.03.2021

Gaurav @ Gora

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Prateek Pandit, Advocate
for the applicant-petitioner.

...

SUVIR SEHGAL, J. (Oral)

The Court has been convened through video conferencing due to
Covid-19 Pandemic.

CRM-8278-2021

Prayer made in the application is for placing on record air ticket
of the petitioner as Annexure A-1 and further for exemption from filing the
certified copy of the same.

For the reasons given in the application, it is allowed.

CRM-M-8301-2021

Instant petition has been filed under Section 482 of Code of
Criminal Procedure, 1973 seeking quashing of order dated 02.03.2013
(Annexure P-5) passed by the Ld. Judicial Magistrate, Ist Class, Jalandhar,
whereby the petitioner has been declared as proclaimed offender in case

FIR No.74 dated 19.08.2010 under Section for offences 51, 52, 52-A, 64, 66 and 68-A of Copy Right Act, 1957 and Sections 186, 353, 435, 201 and 283 of Indian Penal Code, 1860, registered at Police Station Basti Bawa Khel, District Jalandhar.

Facts, in brief, leading to the filing of the petition are that the accused-petitioner and his father were alledgedly selling pirated Compact Disks when they were apprehended by the police. Futher allegation is that they set the pirated Compact Disks on fire, obstructed the police in discharging their duty and managed to slip away from the spot. The petitioner was granted anticipatory bail by this Court in CRM-M-1150-2011, which was made absolute vide order dated 23.02.2011 (Annexure P-2). By virtue of impugned order passed on 02.03.2013 (Annexure P-5), the petitioner has been declared as a proclaimed offender and his father has been acquitted of all the charges vide judgment dated 27.11.2014 (Annexure P-4) passed by the JMIC, Jalandhar.

Counsel for the petitioner has argued that the petitioner is a young man, who after completing education upto senior secondary level, got lured by a travel agent and went abroad, where his passport was illegally retained by the agent, who misplaced it. He was given a temporary living permit by the French Government on which he could not travel and after issuance of fresh passport on 25.07.2019 (Annexure P-3), he is returning back to India on 23.03.2021. Counsel for the petitioner urges that the petitioner has been declared as a proclaimed offender in violation of the mandatory provisions of the Code of Criminal Procedure inasmuch as

neither any proclamation was issued to get service effected on him, nor any attempt was made to serve him through the Ministry of External Affairs. Counsel has referred to Sub Section 4 of Section 82 of the Code to submit that in any case, the petitioner is not alleged to have committed any of the offences specified in the Sub Section, therefore, he could not be declared as a proclaimed offender. To buttress his argument, counsel has placed reliance upon the judgment of this Court in ***Rahul Dutta Versus State of Haryana 2012 (2) RCR (Criminal) 585***. Still further, he submits that after reaching back to India and remaining in quarantine as per the medical protocol, he will surrender before the trial Court, join the proceedings and deposit the costs of Rs.40,000/-.

Notice of motion.

On asking of the Court, Mr. Ramandeep Sandhu, Senior Deputy Advocate General, Punjab accepts notice on behalf of respondent-State. Upon instructions from ASI Roop Lal, he has opposed the petition and submitted that the procedure as prescribed in Section 82 of the Code has been followed before passing the impugned order and the petitioner despite being aware of the pendency of the criminal proceedings, has deliberately evaded the process of law.

I have considered the submissions of the parties.

Without going into the question as to whether there is violation of the provisions of Section 82 of the Code, suffice is to say that the purpose of incorporating Section 82 in the Code is to secure the presence of the accused. Once the accused-petitioner has unequivocally offered to

surrender before the trial Court, the objective of the provision stands achieved and the accused can no longer be called an absconder. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in *Vimla Ben Ajit Bhai Versus Vatslaben Ashom Bhai Patel and others (2008) 4 SCC 649*.

In view of the above facts, impugned order dated 02.03.2013 (Annexure P-5) is ordered to be quashed subject to the condition that the petitioner surrenders before the trial court within a period of eight weeks' from today and deposits costs of Rs.40,000/- with the PGIMER, Poor Patient Welfare Fund, Sector 12, Chandigarh.

Upon surrendering and furnishing of receipt of deposit, the trial Court shall release the petitioner on bail subject to his furnishing of bail/surety bonds to the satisfaction of the trial Court.

Arrest of the petitioner is ordered to be stayed for a period of eight weeks from today.

Petition is disposed of.

(SUVIR SEHGAL)
JUDGE

17.03.2021
Pardeep

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No