

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

CRM-M-6593-2020

Date of decision:-14.7.2021

Ajay Kumar

...Petitioner

Versus

State of Haryana

...Respondent

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

Present : Mr.Ashish Grewal, Advocate
for the petitioner.

Mr.Karan Garg, AAG, Haryana.

H.S. MADAAN, J.(ORAL)

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner Ajay Kumar, aged about 35 years, resident of House No.30, Satsang Vihar, Ambala Road, Jagadhri, District Yamuna Nagar, an accused in FIR No.0306 dated 11.3.2019, under Section 174-A IPC, registered with Police Station Jagadhri City, District Yamuna Nagar.

Briefly stated, the facts of the case are that petitioner Ajay Kumar, who happened to be an accused in a complaint case titled 'Anil Kumar Versus Ajay Kumar', under Section 138 of Negotiable

Instruments Act, pending in the Court of Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri did not put in appearance despite being summoned repeatedly through notice, warrants of arrest, as such ultimately proclamation under Section 82 Cr.P.C. was published against him calling upon him to appear in the trial Court within 30 days of publication of the said proclamation but he failed to do so, as such he was declared a proclaimed person by Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri vide order dated 8.2.2019. On intimation being given to the local police, formal FIR for the offence under Section 174-A IPC was registered against him.

Apprehending his arrest, the petitioner had approached the Court of Sessions at Yamuna Nagar at Jagadhri seeking grant of pre-arrest bail by filing application, which was assigned to Additional Sessions Judge, Yamuna Nagar at Jagadhri. However, his such application had been dismissed vide detailed order dated 11.12.2019. As such, the petitioner has approached this Court by way of filing the instant petition asking for the similar relief, which request is being resisted by the State counsel.

I have heard learned counsel for the parties besides going through the records.

Learned counsel for the petitioner/accused has stated that the matter has been compromised between the parties in the complaint case and as a result thereof, the complaint has been finally disposed of; the present FIR was an offshoot of the said complaint. Therefore, the petitioner deserves to be granted pre-arrest bail.

Whereas the request is being opposed vehemently by the

State counsel.

After considering the rival contentions, I find that it is not a fit case to grant concession of pre-arrest bail to the petitioner/accused. Section 174-A of the Indian Penal Code deals with Non-appearance in response to a proclamation under section 82 Cr.P.C. providing that whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section(1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

That offence is certainly an independent offence and is not offshoot of the complaint case. The offence is complete once a person does not put in appearance in response to publication of proclamation under Section 82 Cr.P.C. The Legislature in its wisdom has provided for this offence to deter the persons, accused of criminal offences from avoiding appearance in the Court on coming to know about the same after publication of proclamation under Section 82 Cr.P.C. That offence is meant to ensure that process issued by the Court is duly obeyed and not taken lightly. The petitioner/accused by not appearing in the Court even in response to publication of proclamation under Section 82 Cr.P.C. against him had been declared proclaimed person vide order dated 8.2.2019. He had approached the Court of Sessions at Yamuna Nagar at Jagadhri seeking relief of pre-arrest bail. However, his such

application was dismissed vide order dated 11.12.2019.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from arrest and custodial interrogation.

Here conduct of the petitioner in not putting in appearance in the Court in criminal complaint case titled 'Anil Kumar Versus Ajay Kumar' in the Court of JMIC, Yamuna Nagar at Jagadhri despite receipt of notice, which he was reported to have refused to accept and warrants of arrest, which were received back unexecuted and only then proclamation under Section 82 Cr.P.C. was published against him. Since he did not appear in the Court despite publication of such proclamation, as such he was declared proclaimed person vide order dated 8.2.2019. The conduct of the petitioner/accused failing to put in appearance in the Court despite issuance of these process clearly disentitles him to grant pre-arrest bail.

The law on the subject is very clear that a proclaimed offender is not entitled to grant of pre-arrest bail. In **State of Madhya Pradesh Versus Pradeep Sharma, 2014(1) R.C.R.(Criminal) 269,** Hon'ble Apex Court has categorically observed that when an accused had absconded and declared as a proclaimed offender in terms of Section 82 Cr.P.C., he is not entitled to pre arrest bail.

This very view was earlier taken in another judgment by the Apex Court i.e. **Jagtar Singh Versus Satendra Kaur @ Bhavana Grover & Ors, 2002 Cri. L.R.(SC) 807,** wherein it was observed that normally when accused are absconding, there is no question of granting

anticipatory or regular bail.

Although the petitioner is said to have appeared in the trial Court during the period of interim bail granted to him but that does not confer any valuable right upon him to get the present petition accepted. If such type of persons, who pay little respect to the process issued by the Court are shown any indulgence and leniency, that would encourage and embolden the other persons similarly placed to defy the process issued by law, which is certainly not desirable and is uncalled for. The proper course for petitioner was to appear in the trial Court and move application for regular bail rather than trying to by-pass the said Court and come to this Court directly.

Therefore, the petition is doomed for failure and is dismissed accordingly.

However, it is observed that on petitioner appearing in the trial Court within seven days from today and moving an application for regular bail, the same be decided expeditiously.

14.7.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No