

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

125

CRM-M-11678-2021
Date of decision:15.03.2021

GURDEEP SINGH NIHANG

...PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. N.S. Dandiwal, Advocate for the petitioner.

SUVIR SEHGAL J. (ORAL)

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

Instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of order dated 30.09.2019, Annexure P-4, passed by the Additional Chief Judicial Magistrate, Moga, in FIR No.114 dated 28.10.2017, Annexure P-1, registered under Sections 336, 447, 511, 148, 149, 120-B IPC, 1860 and Sections 25 and 27 of the Arms Act, 1959, at Police Station Sadar Moga, District Moga.

Facts, in brief, are that the FIR has been registered on the complaint of Secretary, Gurudwara Manji Sahib Patshahi on the allegation that 14-15 persons, who were armed with rifle, kirpan, khande etc. came on two vehicles and tried to take forcible possession of the Gurudwara Sahib. When they were confronted by the complainant and other office bearers of the Gurudwara Sahib and the residents of the

village, they fired in the air and fled from the spot. The complainant alleged that the conspiracy has been hatched by Gurdeep Singh, present petitioner and Nihang Singh.

Counsel for the petitioner has urged that the petitioner has been declared as a Proclaimed Absconder by virtue of the impugned order without his being served at the address of his residence. He has referred to the proclamation notice, Annexure P-2, and statement of serving officer to submit that not only is the proclamation defective but also it has been affixed at a wrong place. His argument is that mandatory provision of Section 82 of the Code of Criminal Procedure have not been complied with. He submits that the petitioner is willing to surrender before the trial court and join the proceedings.

Notice of motion.

On asking of the Court, Mr. Ramandeep Sandhu, Senior Deputy Advocate General, Punjab, accepts notice on behalf of the respondent-State. He has opposed the petition, upon instructions from ASI Balwinder Singh and submitted that the petitioner has been served in accordance with the prescribed procedure and despite being aware of the pendency of the criminal proceedings, he has deliberately evaded the process of law.

I have considered the submissions of the parties.

A perusal of the proclamation notice shows that it has been issued to the petitioner with his address of village PHEME Wali, District Ferozepur, but the serving officer has carried out the affixation at village Bhagi Patni, at Ferozepur, where the petitioner does not reside. Still further, in the body of the proclamation notice it has been mentioned that

the petitioner is alleged to have committed an offence under Section 420 IPC. The notice, Annexure P-2, and its publication are, therefore, flawed and do not met the mandate of Section 82 of the Code of Criminal Procedure. The petitioner cannot be said to have been served and his non-appearance before the Court on the date fixed does not make him an absconder.

Furthermore, the objective of Section 82 Cr.P.C. is to secure the presence of the accused. Once the accused as unequivocally offered to surrender before the trial court, the purpose of the provision would stand served.

In view of the above facts, impugned order dated 30.09.2019, Annexure P-4, is ordered to be quashed subject to the condition that the petitioner surrenders before the trial court within a period of six weeks' from today and deposits cost of Rs.10,000/- with the PGIMER, Poor Patient Welfare Fund, Sector 12, Chandigarh. Upon surrendering and furnishing of receipt of deposit, in case, the petitioner files an application for grant of regular bail, the trial court shall make an endeavour and decide it within a period of one week of its filing.

Petition is disposed of.

15.03.2021
sheetal

(SUVIR SEHGAL)
JUDGE

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