

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

231

CRM-M-36148 of 2020

Date of decision :- 28.01.2021

Jaspreet Singh @ Jassa

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Surinder Garg, Advocate for the petitioner.

Mr. Saurabh Khurana, DAG, Punjab for the State.

SUVIR SEHGAL, J.

The hearing of this petition has been taken up through video conferencing on account of outbreak of Covid-19 Pandemic.

Instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of the order dated 15.07.2017, Annexure P-2, passed by the Judicial Magistrate Ist Class, Dhuri vide which the petitioner has been declared as 'proclaimed absconder' in FIR No.16 dated 25.01.2017 registered under Section 304-B/498-A/34 IPC (Section 304-B was added later on) at Police Station Sadar, Dhuri, District Sangrur and the subsequent proceedings.

Counsel for the petitioner has submitted that the petitioner was married to Yadwinder Kaur, deceased, on 10.02.2016. Within two months of his marriage, he left India for Malaysia and was in Malaysia throughout till his return in October, 2020. On 24.01.2017, his wife consumed sulfas tablets and was admitted in a hospital but she expired. The abovementioned FIR was registered on the complaint of Tejinder Singh, the brother of the deceased, wherein the petitioner and his mother, Jaswinder Kaur, were named as accused. Counsel submits that as the petitioner was not in India at

the time of the death of his wife and registration of FIR, the summons issued

by the Court for his service were never effected upon him. He submits that without adopting the procedure as prescribed under Section 82 of the Code, the trial Court declared the petitioner as a 'proclaimed absconder' vide order impugned herein. According to the counsel, the petitioner filed a petition for anticipatory bail which was rejected by the learned Sessions Judge, Sangrur, by order dated 01.10.2020, Annexure P-3.

Counsel for the petitioner has referred to the passport, Annexure P-5, and taken the Court through the immigration stamp affixed at the International airport, New Delhi to contend that the petitioner departed from the Airport on 06.04.2016 and returned to India on 09.10.2020. He has referred to Para 10 of the petition to urge that the petitioner was in Malaysia throughout from April, 2016 to October, 2020. Still further, he has referred to the Medical reports, Annexure P-6, of the petitioner to submit that the petitioner has a heart ailment. According to the counsel, the Left Ventricular Ejection Fraction (LVEF) of the petitioner is 45 per cent as the blood being pumped from the left ventricular of the heart of the petitioner is below the normal value of 56-80 per cent. Counsel contends that his medical condition is grave. It is his argument that in pursuance to the interim order passed by this Court on 05.11.2020, he has surrendered before the trial Court on 10.11.2020 and has been admitted to interim bail. Still further, he submits that his mother, who is the co-accused, has been acquitted by the trial court vide judgment dated 01.06.2018, Annexure P-5.

Per contra, learned State counsel upon instructions from ASI Sukhwinder Singh has opposed the petition and submitted that the proclamation had been effected after following the procedure as prescribed under the Code and the petitioner, who was well aware of the pendency of the proceedings, deliberately evaded appearance before the Court.

I have considered the respective submissions of the counsel for the parties.

On 05.11.2020, this Court passed the following order:-

“This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

The petitioner, it is submitted, was not in India at the time of registration of FIR No. 16 under Sections 304B, 498A, 34 IPC on 25.01.2017. The petitioner was in Malasiya at the relevant time and he has returned to India in October 2020 itself. Therefore, order dated 15.07.2017 (Anneuxre P2), declaring the petitioner to be a proclaimed absconder, is de-hors the provisions of law. The co-accused, it is stated, have since been acquitted. It is further submitted that the petitioner undertakes to face trial in the above said FIR.

Notice of motion.

Ms. Monika Jalota, DAG, Punjab accepts notice on behalf of respondent - State and prays for some time to seek the complete details of the matter.

At request, adjourned to 28.1.2021.

The petitioner, in the meanwhile, shall appear before the learned trial Court within one week. On his appearance, he be admitted to interim bail till the next date of hearing on deposit of surety/bonds to the satisfaction of the said Court.”

The petitioner has produced a copy of the zimni order passed by the trial Court on 10.11.2020, which is taken on record, from which it transpires that the petitioner has surrendered before the trial Court, joined the proceedings and has been released on interim bail.

It has been held by the Hon’ble Supreme Court in Vimlaben

Ajitbhai Patel versus Vatslaben Ashokbhai Patel and others, (2008) 4

Procedure have been put on the statute book for a certain purpose i.e. to secure the presence of the accused. Once the accused, who was absconding, has surrendered and obtained bail, the purpose stands achieved and the accused can no longer be described an absconder.

It is, therefore, clear that the objective was to ensure the presence of the accused. As is apparent from the interlocutory order produced before this Court by the counsel for the petitioner, the petitioner has already appeared before the trial Court and joined the proceedings. As such the purpose for which the proceedings under Section 82 Cr.P.C. have been initiated stand achieved and the petitioner no longer remains an absconder.

In view of the above discussion and the facts and circumstances as have been put-forth before this Court by the counsel for the petitioner, the impugned order dated 15.07.2017, Annexure P-2, and the subsequent proceedings against the petitioner are quashed. As the petitioner has already joined the proceedings and is on interim bail, the bail order is made absolute subject to the condition that the petitioner shall file an undertaking to the effect that he will appear before the trial Court on all the dates, unless exempted and he will not cause any delay in the trial proceedings. In case of breach of the undertaking, the prosecution would be at liberty to seek cancellation of his bail. The undertaking shall be filed before the trial court within four weeks from today.

The petition is disposed of.

28.01.2021
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No