

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

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**CRM-M No.39026 of 2020
Date of decision:11.01.2021**

Malkit Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Vinay Kumar, Advocate for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

SUVIR SEHGAL J. (ORAL)

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

Petitioner has filed this petition under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.76, dated 18.12.2015 registered under Sections 304-A, 279 of IPC, 1860 at Police Station Dera Baba Nanak, District Batala.

Counsel for the petitioner submits that the FIR in question was registered on the allegation that the petitioner was driving the offending truck which hit the motorcycle being driven by the deceased, Kulwant Singh. Counsel urges that the offence is bailable and the petitioner, who was arrested on 12.01.2016, was on bail. However, due to absence of the petitioner before the trial Court on 15.05.2017, proceedings were

initiated against the petitioner under Section 82 of the Code of Criminal Procedure and he was declared as proclaimed offender on 04.09.2018. Counsel contends that the proclamation under Section 82 *ibid* was published on 02.08.2018 for 04.08.2018 and the proceedings were adjourned by the trial Court to 04.09.2018 to complete the requisite period of 30 days. It is the argument of the counsel for the petitioner that such a procedure is violative of the mandatory provisions of Section 82 *ibid*. According to the counsel, petitioner was re-arrested on 29.09.2020 and due to outbreak of the pandemic, the trial is not progressing, therefore, petitioner deserves to be released on bail. Counsel asserts that the petitioner is not involved in any other case and he is the sole breadwinner of the family.

Per contra, learned State counsel upon instructions from ASI Sukhwinder Singh submits that as the petitioner has been declared as proclaimed offender, he does not deserve the concession of regular bail. He has filed the custody certificate dated 11.01.2021, which is taken on record. He has instructions to state that the challan was presented on 16.05.2016 and there are 9 prosecution witnesses but since the petitioner absented from proceedings, charge could not be framed.

I have considered the rival submissions of the parties.

Keeping in view the above facts and circumstances, period of incarceration of the petitioner, nature of allegation, gravity of offence and the fact that the mandatory provisions of Section 82 *ibid* have apparently not been adhered to before declaring him as a Proclaimed offender and the trial is likely to take time due to spread of contagion, no

useful purpose would be served by keeping the petitioner behind the bars any further.

Without commenting anything on the merits of the case, the petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate.

It will further be open to the trial Court to impose any condition which it deems reasonable to ensure that the petitioner does not commit any default in future.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

11.01.2021

pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No