

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

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CRM-M-46433-2021

Decided on : 03.11.2021

Rohit Sharma

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

(Through Video Conferencing)

PRESENT: Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. A. K. Kaundal, DAG, Punjab.

VIKAS BAHL, J. (Oral)

The present petitioner has been filed under Section 482 Cr.P.C. for quashing the order dated 26.11.2007 (Annexure P-5) passed by the Chief Judicial Magistrate, Moga in case FIR No. 31 dated 07.02.2007 under Sections 406 and 420 of the Indian Penal Code, 1860 registered at Police Station City Moga, District Moga vide which the petitioner has been declared as proclaimed offender.

Learned counsel for the petitioner, inter alia, contends that in the present case, the petitioner was made an accused in the FIR No. 31 dated 07.02.2007 in which the alleged incident of the year 1998 had been highlighted and it had been stated that an amount of Rs.3,00,000/- was paid to the petitioner for sending the complainant abroad. It is submitted that in the said case, an application dated 13.08.2007 (Annexure P-2) was filed for issuing non bailable arrest warrants against the accused and on the said application itself, non bailable warrants against the petitioner

were issued for 07.09.2007. Reference has also been made to Annexure P-3 to show that even as per the statement of the Constable Sukhwinder Singh, the house of the petitioner was locked. No signatures of any independent witnesses were taken, nor the local police of Delhi had been shown to have been involved while going to the house of the petitioner which is situated in Delhi. Moreover, only one attempt had been made to raid the house of the petitioner. Further reference has also been made to the order dated 07.09.2007 which shows that only on the basis of the said attempt, when the house of the petitioner was stated to be locked, proclamation under Section 82 Cr.P.C. had been issued and thereafter, the impugned order dated 26.11.2007 (Annexure P-5), declaring the petitioner as a proclaimed offender, had been passed. Learned counsel for the petitioner has further submitted that it was only when the petitioner was arrested on 23.10.2021, that the petitioner learnt about the said proceedings as the petitioner had no knowledge about the FIR registered in 2007 with respect to the alleged incident of the year 1998. The petitioner was granted transit bail on 24.10.2021 and was directed to appear on 28.10.2021. Uptil 28.10.2021, the certified copy of the said order was not available and thus, even the exemption of personal appearance sought was rejected. However, the exemption sought on 29.10.2021 was granted and now, the petitioner has been asked to appear on 06.11.2021. Learned counsel for the petitioner has submitted that the abovesaid facts would clearly show that the order dated 26.11.2007 vide which the petitioner had been declared a proclaimed offender is illegal and against the law and in complete violation of Section 82 Cr.P.C. It is further submitted that the

petitioner has been declared as a proclaimed offender whereas, as per the provision under Section 82(4), the petitioner, for an offence under Section 406, 420 IPC, 1860, at best could have been declared a proclaimed person and has thus submitted that the order is bad on the said account also. It is further submitted that the petitioner is infact a resident of Delhi and the said FIR had been registered at Police Station Moga and the petitioner had no knowledge about the said proceedings. It is submitted that the petitioner would appear on 06.11.2021 and would also furnish personal bonds/bail bonds/surety bonds to the satisfaction of the Duty Magistrate/ Chief Judicial Magistrate/trial Court and would further keep appearing in the matter unless specifically granted exemption and would not delay the trial. Learned counsel for the petitioner is also ready to deposit an amount of Rs.20,000/- in the High Court Lawyers' Welfare Fund, Chandigarh.

Learned State counsel is fully prepared to assist the Court and has opposed the present petition and has submitted that the present case is of the year 2007 and the petitioner had been declared a proclaimed offender and he does not deserve any concession.

This Court has heard the learned counsel for the parties and has perused the record.

A perusal of the record would show that the FIR has been registered on 07.02.2007 for the alleged incident of the year 1998 in which an amount of Rs.3,00,000/- was stated to have been paid to the petitioner. Thus, there was a delay of 9 years in the registration of the FIR. Further, it is apparent from the record that the petitioner is a resident of Delhi and the FIR had been registered at Police Station Moga

and a perusal of the application dated 13.08.2007, statement of the Serving Constable dated 07.09.2007 as well as the order dated 07.09.2007 and the order dated 26.11.2007, declaring the petitioner as proclaimed offender, would show that although upon first attempt, the house of the petitioner was stated to have been found to be locked but only the said one effort was made to execute the non bailable warrants. Moreover, it has not even been stated that the Delhi police had also accompanied the police team which had gone from Punjab, nor there is any reference of any witness or statement of any person recorded to show that the raid was actually conducted. The order declaring the petitioner as proclaimed offender has been passed only by making the said solitary attempt. The Duty Metropolitan Magistrate, West/THC/Delhi in its order dated 24.10.2021, while granting transit bail to the petitioner had made observations with respect to the due procedure not having been followed and the petitioner having been arbitrarily arrested on 23.10.2021. The case is now fixed for 06.11.2021 and the petitioner has undertaken to appear on the said date and also submit bail bonds/surety bonds/personal bonds to the satisfaction of Duty Magistrate/ Chief Judicial Magistrate, Moga and has also undertaken to appear on each and every date unless his presence is specifically exempted.

Thus, keeping in view the aforesaid facts and circumstances, the present petition is allowed and the order dated 26.11.2007 (Annexure P-5) declaring the petitioner as proclaimed offender is set aside and the petitioner is directed to appear on 06.11.2021 before the Duty Magistrate/Chief Judicial Magistrate/trial Court and on his appearance on

06.11.2021, the concerned Duty Magistrate/Chief Judicial Magistrate/trial Court is directed to release the petitioner on bail subject to furnishing bail bonds/surety bonds to the satisfaction of the concerned Duty Magistrate/Chief Judicial Magistrate/trial Court.

The petitioner is directed to appear before the trial Court regularly on every date except on dates on which exemption has been granted to him by the trial Court and also not to delay the proceedings of the trial Court.

The petitioner is further directed to deposit an amount of Rs.20,000/- in the High Court Lawyers' Welfare Funds, Chandigarh within a period of one week from the date of receipt of the certified copy of the present order.

It is made clear that in case the petitioner does not appear on 06.11.2021 or does not deposit the abovesaid amount within the period as stated above, then the present petition would be deemed to have been dismissed.

Accordingly, the present petition is allowed.

(VIKAS BAHL)
JUDGE

3rd November, 2021
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No