

S.No.101

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

CRM-M-50581 of 2021 (O&M)

Date of Decision:03.12.2021

Sarwan Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present:- Mr. K.S. Kahlon, Advocate for the petitioner.

SURESHWAR THAKUR, J. (ORAL)

FIR No.144 dated 24.07.2014, is registered at Police Station Dinanagar, District Gurdaspur, constituting therein offences under Sections 323, 324, 506, 34 IPC.

The accused along with other co-accused are alleged to commit the afore-offences. The learned counsel for the bail petitioner submits, that insofar as the other accused are concerned, charges are framed against them, and, also a verdict of acquittal has been drawn qua them. However, since the accused was not in India after two days elapsing since the lodging of the FIR, as, thereafter, he left for Qatar. Consequently, he submits that he was disabled to move an application, for the grant of anticipatory bail.

Be that as it may, since the charge against the other co-accused along with the bail petitioner, was framed by the learned Judicial Magistrate concerned, and also when thereafter, upon, conclusion of trial, through a verdict drawn by him, they became acquitted of the framed charges. However, for the afore reasons, yet the presence of the bail petitioner, before the learned trial Magistrate rather could not be procured.

After the bail petitioner returning to India, he moved an application, seeking grant of anticipatory bail, whereons relief was declined to him.

A perusal of Annexure P.5, reveals that nonailable warrants were issued against the bail petitioner, on 26.08.2015, for securing his personal appearance before the learned trial Magistrate concerned. However, since the serving agency reported to the Magistrate, that they could not execute the warrants against the bail petitioner, as he could not be traced rather his parents disclosing to the Executing Officer, that he had proceeded to Qatar. Consequently, the learned Magistrate concerned, made an order for summoning the bail petitioner through a proclamation. However, thereafter, there is no record available before this Court, rather disclosing that whether the afore-ordered notice of proclamation, upon the accused, for his recording his personal appearance before the learned Magistrate concerned, was either issued or became validly executed, upon him at Qatar, and, also obviously there is no record suggesting whether upon failure of execution of proclamation notice upon the petitioner, hence the details of the assets of the petitioner became elicited, and, nor obviously whether they became ordered to be attached.

From the relevant records, it is not evident that the petitioner had intentionally evaded his making his personal appearance, before the learned Magistrate concerned. The reason for making the afore inference, is drawn from the fact, that since from the report of the serving officer to

whom the petitioner's parents, disclosed that the petitioner had proceeded to Qatar hence, it was within the knowledge of the learned trial Magistrate concerned, that the bail petitioner had travelled to a foreign land, and, if so, hence even prior to the issuance of nonailable warrants against him, and, theirs being attempted to be executed, upon him, for thereafter his personal presence before the learned Magistrate being secured, it was rather imperative for the learned Magistrate, to issueailable warrants upon him. Moreover, the report of the Serving Agency, revealed, that he had travelled abroad, thereupon it was also incumbent upon the learned Magistrate concerned to hence, proceed to order for issuance of nonailable warrants, and, to also order for their execution upon the petitioner, through the Embassy of India, located at Qatar. Contrarily, rather than the afore processes being ordered to be personally executed upon him, after a report being made by the parents of the bail petitioner, to the executing officer, that he has travelled abroad yet the learned Magistrate has untenably proceeded to ordered for the making of a proclamation notice upon the bail petitioner.

In other words, there was a statutory duty, cast upon the learned Magistrate concerned to, even if the bail petitioner was in a foreign land, hence at the relevant time, to ensure his making his presence before him, through the relevant process being ordered to personally served, upon him, through the Embassy of India, located at Qatar, rather than the process being served upon him through his parents in India. Moreover, upon factum of the afore untenable substituted mode, it was legally unbefitting, for the learned

Magistrate, to make a proclamation notice (supra) upon the petitioner. The afore untenable making of issuance of proclamation, and, the lack of recouring of the afore tenable endeavours, has resulted in failure of justice, and, has also unnecessarily cast a stigma, upon, the bail petitioner inasmuch as his being declared a proclaimed offender. For undoing the afore, especially when the learned counsel for the bail petitioner, submits that the latter shall within a week surrender, before the learned Magistrate concerned. Therefore, the bail petition is allowed and the petitioner is, granted anticipatory bail, and, in the event of his being arrested by the Arresting Officer, he shall be released subject to his furnishing personal and surety bonds in the sum of Rs.25,000/- each, to the satisfaction of the Investigating Officer, subject to his making an undertaking before the Arresting Officer, that he shall surrender before the learned Judicial Magistrate concerned, hence positively within a week from today. The longevity of the afore, anticipatory bail, shall be only uptill his making his surrender before the learned Magistrate concerned, whereafter, the latter shall in accordance with law, make appropriate orders on any motion, as made, before him, by the petitioner qua his being granted regular bail, under, the provisions cast under Section 437 of the Cr.P.C.

Moreover, since the co-accused along with the bail petitioner, have received a verdict of acquittal, upon, the relevant charges, and, the bail petitioner has absconded, since two days from the lodging of the FIR, uptill now, thereupon the learned Magistrate concerned is also directed, to avail the provisions contained in Section 299 Cr.P.C, against the bail petitioner,

and, thereafter to proceed to draw charges against him, and, also proceed to open prosecution evidence against the bail petitioner.

Disposed of.

December 03, 2021
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(SURESHWAR THAKUR)
JUDGE

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