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

CRM-M-4191-2022 (O&M)
Date of decision : 14.03.2022

Harpreet Singh @ Happy

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Inderjit Sharma, Advocate for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.14 dated 07.04.2015 registered under Sections 457, 380 and 511 of the Indian Penal Code, 1860 at Police Station Tibber, Tehsil and District Gurdaspur (Annexure P-1) and also the order dated 03.09.2015 (Annexure P-7), whereby, the petitioner has been declared as Proclaimed Person by the Additional Chief Judicial Magistrate, Ist Class, Gurdaspur.

Learned counsel for the petitioner at the outset, submits that the present petitioner would not press his prayer for quashing of FIR and is pressing his prayer only with respect to challenge to the order dated 03.09.2015 (Annexure P-7).

Learned counsel for the petitioner has submitted that in the present case, FIR No.14 dated 07.04.2015 was registered against unknown persons. Subsequently, the petitioner was also made an accused in the present case and since, the petitioner was not aware of the proceedings and was never served, thus, he could not apply for anticipatory bail or join the proceedings. It is further submitted that without due service, the petitioner has been declared as proclaimed person vide order dated 03.09.2015 (Annexure P-7). It is contended that in fact, the petitioner was unaware of the said proceedings and had gone abroad on 26.08.2015 and came back on 13.01.2022 and on coming to know about the said proceedings, has filed the present petition and has submitted that the petitioner is ready to surrender and appear before the trial Court within a period of one month from today in case, the impugned order is set aside and he is granted protection and for the loss caused to the complainant, he is also ready to pay Rs.5000/- to the complainant. Learned counsel for the petitioner has further submitted that the petitioner undertakes to appear on each and every date before the trial Court unless his personal appearance is specifically exempted by the trial Court.

Learned counsel for the petitioner has submitted that in the year 2015 only, another FIR i.e. FIR No.16 dated 10.04.2015 was also registered against the petitioner in which also, the petitioner was declared as proclaimed person vide order dated 03.09.2015 and the petitioner had filed CRM-M-4341-2022 for quashing of the said FIR, which was allowed vide order dated 25.02.2022 by the Coordinate Bench of this Court. He has further submitted that three co-accused of the petitioner, who had been tried

in the present case have been acquitted vide judgment dated 23.01.2019 (Annexure P-9) and as per his knowledge, the said judgment has not been set aside.

Notice of motion.

On advance notice, Mr. Sarabjit S. Cheema, AAG, Punjab, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition and submitted that the impugned order has correctly been passed in accordance with law and the same deserves to be upheld.

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

A perusal of the FIR would show that the same was registered on 07.04.2015 against unknown persons. Apparently, the petitioner was made an accused subsequently, and perusal of zimni orders would show that the petitioner was not duly served and was declared as proclaimed person vide order dated 03.09.2015 (Annexure P-7). It is the case of the petitioner that he had gone abroad on 26.08.2015 and copy of the passport has been annexed with the present petition regarding the same. It is further his case that on 13.01.2022, the petitioner had come back and upon learning about the said proceedings, he filed the present petition. It has been pointed out that another FIR was registered against the petitioner at about same time when the present FIR was registered and in the said case also, the petitioner was declared as proclaimed person and the Coordinate Bench of this Court was pleased to pass the order quashing the said FIR, subject to the petitioner appearing before the concerned Court within 30 days from the date of order.

The relevant portion of the said order is reproduced as under:-

“ANOOP CHITKARA J.

<i>FIR No.</i>	<i>Dated</i>	<i>Police Station</i>	<i>Sections</i>
16	10/04/15	Tibber, Tehsil and District Gurdaspur	457, 380 and 511 IPC read with Sections 25, 27, 54, 59 of the Arms Act, 1959

Seeking quashing of aforesaid FIR as well as proclamation order dated 03.09.2015 (Annexure P-7), the accused has come up before this court under Section 482 CrPC.

2. I have heard learned counsel for the parties and gone through the pleadings.

3. As far as the first prayer for quashing of above-mentioned FIR is concerned, no case for quashing is made out on the face of the prima facie allegations. Whether the accused connected or was properly identified because the assailants had muffled their faces, is a question to be appreciated by the court framing charges and not for this court while exercising its inherent jurisdiction under section 482 CrPC. Thus, the first prayer is dismissed.

4. Regarding the second prayer for quashing of proclamation, it merits consideration. The stand of the accused is based on visa stamps on his passport, which could not be disputed by the State.

a). As per immigrations stamp, the petitioner had departed from India on 26-8-2015 and returned on 16-10-2015;

b). Vide order dated 6-6-2015, Ld. JMJC issued Non-Bailable warrants returnable for 6-7-2015;

c). Vide order dated 6-7-2015, Ld. ACJM issued proclamation for 12-8-2015;

d). The proclamation was not affixed on time, but was

affixed on 2-8-2015;

e). Vide order dated 12-8-2015, Ld. ACJM posted the matter for 3-9-2015, i.e., after thirty days of 2-8-2015, the date of affixation;

f). Vide impugned order dated 3-9-2015, Ld. ACJM declared the accused/petitioner as a proclaimed offender.

g). The accused was not in India as depicted from visa stamps on his passport, w.e.f. 26-08-2015.

h). The petitioner went to Bahrain on 26-12-2015 and returned on 13-01-2022.

i). On his return after around seven years of stay abroad, the petitioner claims to have the knowledge about proclamation for the first time, and filed the present petition on 25-01-2022.

5. The violation involved in the facts and circumstances of the present case is that vide order dated 6-7-2015, Ld. ACJM had issued a proclamation for 12-8-2015. The court had given a date after 36 days, i.e., keeping five days for affixation of proclamation. The concerned official did not affix it on or before 12-7-2015 or 13-7-2015 and instead affixed it on 2-8-2015. It implies that the concerned court never extended the time of thirty days. Instead of issuing a fresh proclamation, the concerned court treated the affixation on 2-8-2015 as valid and gave him time to appear after 30 days of affixation. However, for the sake of argument, even if the accused was aware of affixation, it was as per order dated 6-7-2015, with an appearance on 12-8-2015. There was no judicial order intimating the appearance date in the proclamation notice as 3-9-2015. Instead of ordering a fresh proclamation, the concerned court did not consider how the accused would come to know about the extension of the date of appearance? Thus, the order is arbitrary and did not afford reasonable opportunity as mandated under Section 82 of CrPC.

6. Give above, the impugned order dated 03.09.2015 is set aside. Consequently, the nonbailable warrants which had returned unexecuted shall not be enforced. The petitioner to appear before the concerned court within thirty days from today. He shall be at liberty to apply for bail.

Petition allowed in the terms mentioned above.

Sd/-(ANOOP CHITKARA)

JUDGE

February 25, 2022”

It has also been pointed out that other accused persons, who were tried alongwith the petitioner have been acquitted vide judgment dated 23.01.2019 (Annexure P-9).

Learned counsel for the petitioner has already submitted that the petitioner has undertaken to appear before the trial Court within a period of one month from today and to also appear on each and every date before the trial Court unless his personal appearance is specifically exempted by the trial Court.

Keeping in view the abovesaid facts and circumstances, the present petition qua relief of quashing of FIR is dismissed as not pressed and qua challenge to the order dated 03.09.2015 (Annexure P-7), is allowed and the order dated 03.09.2015 (Annexure P-7) is set aside subject to the petitioner appearing before the trial Court within a period of one month from today and on his appearance, the trial Court is directed to release the petitioner on bail on his furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court. The same would also be subject to the petitioner depositing an amount of Rs.5000/- within the stipulated time with the trial Court, which would be released to Punjab and Sind Bank and

would also be subject to the petitioner giving an undertaking to the trial Court that he would appear before the trial Court on each and every date unless his appearance is personally exempted by the Court.

In this case, notice has not been issued to the complainant as he has not been made a respondent party by the learned counsel for the petitioner in the present petition and as no order prejudicial to the rights of complainant, is being proposed to be passed by this Court and issuance of notice would only further delay the matter which would cause prejudice to the complainant and since the main purpose is to make the petitioner appear before the trial Court, thus, the present petition is disposed of without issuance of notice to complainant.

It is, however, clarified that in case, the petitioner does not appear within one month from today before the trial Court and does not deposit the costs of Rs.5000/- and fails to give the abovesaid undertaking, then the present petition would be deemed to have been dismissed.

14.03.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**