

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No. 4341 of 2022
Reserved on 18.02.2022
Pronounced on : Feb. 25, 2022

Harpreet Singh @ HappyPetitioner

Vs.

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Mr. Rehatbir Singh Mann, DAG, Punjab.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
0016	10.04.2015	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. JMIC 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 non-bailable warrants which had returned unexecuted shall not be enforced. The petitioner to appear before the concerned court with in thirty days from today. He shall be at liberty to apply for bail.

Petition allowed in the terms mentioned above.

(ANOOP CHITKARA)
JUDGE

February 25, 2022
sonia arora

Whether speaking/reasoned: Yes
Whether reportable: No