

(202)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9897-2022
Date of Decision: 12.09.2022

SHAHID MALIK @ SHAHID CHUHA

... Petitioner

Versus

DIRECTORATE OF ENFORCEMENT & ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vipul Jindal, Advocate for the petitioner.

Mr. Satyapal Jain, Senior Advocate
Assistant Solicitor General, assisted by
Ms. Sharmila Sharma, Senior Panel Counsel
for respondent-ED.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 15.02.2022 (Annexure P-7) declaring the petitioner as a proclaimed offender in complaint case No.1 of 2018 dated 20.11.2018 titled as Directorate of Enforcement Versus Athar Sayeed and others registered under Section 45 Prevention of Money Laundering Act, 2002, pending before the learned Special Judge, Jalandhar (designated under The Prevention of Money Laundering Act).

2. The brief facts of the case are that the State Special Operation Cell (SSOC), Amritsar recovered Indian currency of Rs.17,00,000/- and 500 gram heroin from one Athar Sayeed and registered an FIR No.02 dated

27.03.2016 under Sections 27, 29, 61, 85 of Narcotics Drugs and Psychotropic Substances Act, 1985. A charge-sheet has been filed in the FIR by the SSOC on 30.07.2016. On the basis of said FIR, the Directorate of Enforcement, Jalandhar Zonal Office recorded a case No.ECR/02/JLZO/2016 on 31.03.2016 as Sections 21 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 are scheduled offences under the Prevention of Money Laundering Act, 2002. The investigation revealed that the amount of Rs.17,00,000/- seized by the Police from the possession of Athar Sayeed pertained to illegal drug related transactions. Investigation also revealed that Athar Sayeed was indulging in drug trafficking in Punjab following the directions of Shahid Malik @ Shahid Chuha (the petitioner) for payment, whereas Sukhchain Singh indulged in smuggling of heroin and also had made payments of money generated from drug smuggling to Athar Sayeed on the instruction of one Lala, a smuggler. Investigations also revealed that Athar Sayeed used to traffic in drugs on the instructions of Shahid Malik @ Shahid Chuha and also used to hand over all payments received from drug smuggling to Shahid Malik @ Shahid Chuha. Thus, Rs.17,00,000/- seized from the possession of Athar Sayeed son of Ahmad Sayeed was found to be generated through illegal drug trafficking activities and represents the proceeds of crime. Prosecution complaint under Section 45 of PMLA, Act 2002 against Athar Sayeed, Shahid Malik @ Shahid Chuha and Sukhchain Singh was filed before the Hon'ble Court on 20.11.2018.

3. The learned counsel for the petitioner contends that the petitioner could not said to be an absconder as after the dismissal of his application on 18.05.2020 (Annexure P-2), he had filed an anticipatory bail before this

Court, which was pending consideration. As there was no interim protection therefore, the petitioner was unable to join proceedings before the learned Special Court, Jalandhar apprehending his arrest.

4. He contends that the proper procedure as envisaged under Section 82 Cr.P.C. was not followed while declaring the petitioner a proclaimed offender. He refers to the orders Annexures P3 to P-7 to contend that one month's clear notice for appearance after execution of proclamation had not been provided to him and mere adjournment of the case would not amount to proper compliance of Section 82 Cr.P.C. He, therefore, contends that the impugned order dated 15.02.2022 (Annexure P-7) is liable to be set aside. Reliance is placed on the judgments of this Court in **Ruby Begam & another Versus State of Haryana passed in CRM-M-47042-2017, decided on 30.05.2018** and **Avtar Singh Versus State of Punjab, passed in CRM-M-14677-2020, decided on 11.06.2020**

He further contends that the petitioner could not have been declared a proclaimed offender because as per Section 82(4) Cr.P.C. only those offences that were mentioned in the said sub-section entailed declaration of the accused a proclaimed offender. For offences other than those mentioned in Section 82(4) Cr.P.C. no order declaring the person a proclaimed offender could be passed. He therefore, contends that the impugned order dated 15.02.2022 (Annexure P-7) is liable to be set aside on this count as well. Reference has been made to the judgment of Delhi High Court in **Arun Kumar Parihar Versus State (Government NCTD) passed in Criminal M.C. No.863 of 2021.**

5. He also sought to argue on the merits of the case and contends that the petitioner is only named in the statement of his co-accused Athar Sayeed and therefore, as per the judgment of *Tofan Singh Versus State of Tamil Nadu, reported in (2021) 4 SCC 1*, the petitioner could not be held to be liable.

He has also referred to the provisions of Section 45 of the PMLA Act, 2002 to contend that the petitioner was entitled to bail and in that regard has referred to the judgment in Nikesh Tara Chand Shah, AIR 2017 SC 5500.

6. A reply dated 25.04.2022 has been filed on behalf of respondent No.1-Directorate of Enforcement in the shape of an affidavit of Mohit Redhu, presently posted as Assistant Director, Directorate of Enforcement, Jalandhar Zonal Office.

7. As per para 5 of the reply, the petitioner was summoned through non-bailable warrants (NBWs) of arrest on 10.12.2018, 06.02.2019, 20.03.2019, 01.05.2019, 02.07.2019, 09.08.2019, 06.09.2019, 10.10.2019, 07.11.2019, 06.01.2020, 24.02.2020, 12.03.2020, 22.09.2020, 13.10.2020, 13.11.2020, 04.12.2020, 23.12.2020, 12.01.2021, 01.02.2021, 22.02.2021, 24.03.2021, 15.04.2021, 03.05.2021, 27.05.2021, 02.07.2021, 22.07.2021, 10.08.2021 and 31.08.2022. However, the petitioner was intentionally avoiding the service of the said non-bailable warrants (NBWs) by absconding. It was in those circumstances that the Court declared him a proclaimed offender under Section 82 Cr.P.C. In fact, even during investigation a number of summons had been issued to the petitioner. However, he did not appear and thus, never joined investigation.

8. It is further contended that as per the various orders attached by the petitioner, it becomes apparent that initially on 22.11.2021 (Annexure P-3) as non-bailable warrants (NBWs) of arrest had been received back unexecuted, he was to appear on 10.12.2021.

On 10.12.2021(Annexure P-4) a fresh proclamation was to be published under Section 82 Cr.P.C. requiring him to appear before the Court on 03.01.2022.

On 03.01.2022 (Annexure P-5), the Court passed an order stating that the serving official had affixed the proclamation on the door of his house as well as in a public place and the Notice Board of the Court on 31.12.2021. Therefore, the proclamation against the accused stood effected and the matter was adjourned to 24.01.2022 awaiting his appearance.

On 24.01.2022 (Annexure P-6) once again the petitioner did not appear and therefore, the Court adjourned the case as the period of one month had not elapsed and the matter was to be taken up for hearing on 15.02.2022.

On 15.02.2022 (Annexure P-7), the petitioner was declared a proclaimed offender under Section 82 Cr.P.C.

9. Therefore, the contention of respondent No.1-Directorate of Enforcement is that due process under Section 82 Cr.P.C. was followed prior to his declaration as a proclaimed offender. In fact, the petitioner knew about the pendency of these proceedings and had sought the concession of anticipatory bail, which had been dismissed. He had thus been given ample opportunities to appear before the Court and to state his reasons for non-compliance of the proclamation but deliberately did not appear before the Court. It is thus, contended that the petitioner who is accused of a serious

offence has been absconding from the year 2016 onwards when the aforesaid FIR No.02 dated 27.03.2016 had been registered.

10. It is also contended that undoubtedly, Section 82(4) Cr.P.C. does not refer to offences under the PMLA Act, 2002, however, the petitioner could certainly be declared a proclaimed person the affect of which is similar to that of being declared a proclaimed offender. Reliance is placed on the judgment of this Court in Smt. Deeksha Puri Versus State of Haryana, passed in CRM-M-359-2012, decided on 16.10.2012.

11. It is also contended that so far as the merits of the case are concerned, the anticipatory bail of the petitioner stands dismissed. He has filed a petition before this Court in which no interim order of stay of his arrest has been passed. In terms of Section 45 of the PMLA Act, 2002, the petitioner was otherwise not entitled to the grant of bail. Even otherwise, the entitlement of bail to the petitioner would be a matter of adjudication in a petition under Section 438 Cr.P.C. and not in the present case, which is quashing of the order whereby the petitioner has been declared a proclaimed offender.

12. I have heard the learned counsel for the parties at length.

13. In the present case, an FIR No.02 dated 27.03.2016 came to be registered when a sum of Rs.17,00,000/- cash and 500 grams of heroin were recovered from Athar Sayeed, the co-accused of the petitioner. During the course of investigation, it transpired that the said Athar Sayeed was indulging in drug trafficking in Punjab on the directions of Shahid Malik @ Shahid Chuha (the petitioner), whereas another co-accused Sukhchain was also involved in this smuggling and had made payments of money generated from drugs smuggling to Athar Sayeed on the instructions of one Lala, a smuggler.

Thus, apparently Athar Sayeed was a trafficker of drugs on the instructions of the petitioner and would hand over all payment received from drug smuggling to the petitioner. Based on the aforementioned FIR No.02 dated 27.03.2016, respondent No.1-Enforcement Directorate registered a case bearing ECIR No.02/JLZ0/2016 dated 31.03.2016 to investigate the offence of money laundering. During investigation of the said ECIR No.02/JLZ0/2016 dated 31.03.2016 premises of the petitioner were searched resulting in the seizure of incriminating documents which showed some unauthorized money transactions in foreign currency and maintenance of balance in both Indian and Pakistani currency. In his statement under Section 50 of the PMLA Act, 2002 Athar Sayeed stated that he used to visit Amritsar on the directions of the petitioner-Shahid Malik @ Shahid Chuha. The petitioner was summoned a number of times to join investigation. However, he did not do so. Ultimately a complaint case No.01 of 2018 dated 20.11.2018 (Annexure P-1) came to be filed by respondent No.1-Directorate Enforcement.

As has already been mentioned hereinabove, since the petitioner was absconding non-bailable warrants had been issued against him on 28 occasions. It is only thereafter following due procedure that he was declared a proclaimed offender. In fact, a perusal of the orders Annexures P-6 and P-7 clearly established that the petitioner was given more than 01 month's time to appear before the Court concerned. However, he chose not to do so. Interestingly, the petitioner is absconding since the year 2016 and has chosen not to surrender, despite the fact that his anticipatory bail was declined on 18.05.2020 and no interim bail has been granted to him in the anticipatory bail filed before this Court till date. In fact, merely because he filed a petition

under Section 438 Cr.P.C. would not mitigate the conduct of the petitioner who has not joined proceedings till date.

14. With respect to the arguments of the petitioner that he could not have been declared a proclaimed offender as the offence under the PMLA Act, 2002 does not come within the domain of Section 82(4) Cr.P.C, it may be pointed out that this Court in the case of Smt. Deeksha Puri (supra) has held any person who has been declared a proclaimed person under Section 82(1) Cr.P.C. or under Section 82(4) Cr.P.C. will be at par for the purposes of all the liabilities and consequences attached to a person declared proclaimed offender. It is further mentioned that the order of declaring a person a proclaimed offender cannot be challenged solely on the ground that the offence alleged to have been committed by him is not included in Section 82(4) Cr.P.C. The relevant paragraph of the aforementioned judgment in the case of Smt. Deeksha Puri (supra) is as under:-

“In view of above, it is held that provisions of Section 82 (4) Cr.P.C. incorporated by amendment of Act No.25 of 2005 do not lay down that the persons accused of having committed offences mentioned under Section 82 (4) Cr.P.C. can only be declared a proclaimed offender. It is further held that any person who has been declared a proclaimed person under Section 82 (1) Cr.P.C. or under Section 82 (4) Cr.P.C. will be at par for the purpose of all the liabilities and consequences attached to a person declared proclaimed offender.

It is further clarified that order of declaring a persons a proclaimed offender cannot be challenged solely on the ground that the offence alleged to have been committed by him is not included in the sections mentioned in Section 82 (4) Cr.P.C. This judgment, however, will not effect the rights

of a proclaimed offender to challenge the proceedings of declaring him a proclaimed offender if statutory violation of any of the provisions of issuance of warrant or proclamation is established in individual cases.”

15. So far as the contentions of the petitioner with respect to the merits of the case are concerned, the same would be agitated by him during his hearing in the anticipatory bail petition. This petition is merely a challenge to the impugned order dated 15.02.2022 (Annexure P-7), vide which he has been declared a proclaimed offender.

16. Even though in the present petition the merits of the case are not to be looked at however, it may be pointed out that as per the case of the petitioner, he has been named in the disclosure statement of his co-accused and therefore, he was entitled to anticipatory bail. However, in the recent decision of **The State of Haryana Vs. Samrath Kumar, 2022(3) R.C.R. (Criminal), 991**, the Hon'ble Supreme Court held as under:-

“Leave granted.

2. Both these appeals arise out of independent orders passed by the High Court of Punjab and Haryana at Chandigarh granting pre-arrest bail to the respondents herein who were implicated for alleged offences under Sections 17, 27A and 85 of the NDPS Act, 1985.

3. Heard learned Additional Advocate General for the State of Haryana and learned counsel appearing on behalf of the respondents.

4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High

Court in the majority judgment of this Court in Tofan Singh vs. State of Tamil Nadu reported in (2021) 4 SCC 1.

5. But, it is contended by the learned Additional Advocate General appearing on behalf of the State of Haryana that on the basis of the anticipatory bail granted to the respondents, the Special Court was constrained to grant regular bail even to the main accused-Dinesh Kumar and he jumped bail. Fortunately, the main accused-Dinesh Kumar has again been apprehended. According to the learned Additional Advocate General, the respondent in the second of these appeals is also a habitual offender.

6. Learned counsel appearing on behalf of the respondent in the first of these Appeals contends that the State is guilty of suppression of the vital fact that the respondent was granted regular bail after the charge-sheet was filed and that therefore, nothing survives in the appeal. But, we do not agree.

7. The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.

8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh vs. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

10. In view of the above, the appeals are allowed. The impugned orders are set-aside. As a consequence, the Appellant-State is entitled to take steps, in accordance with law.”

[emphasis supplied]

Therefore, even on merits, the grant of anticipatory bail to the petitioner in the light of Tofan Singh's case (supra) is highly debatable.

17. In view of the aforementioned discussion, the conduct of the petitioner and the position of law, I find no merit in the present petition and the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

12.09.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No