

CRM-M-14343-2022

IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

CRM-M-14343-2022

Decided on: 05.04.2022

Shamsher Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Ms. Jasdeep Kaur, AAG, Punjab.

ANOOP CHITKARA, J.

1. Challenging the order of proclamation dated 04.10.2019 (Annexure P-4) passed by the learned JMIC, Amritsar in Criminal complaint titled as Anuj Vohra vs. Shamsher Singh, being declared a proclaimed offender, the petitioner has come up before this court under section 482 of Code of Criminal Procedure, 1973 (CrPC).

2. After arguing for some time, Id. counsel for the petitioner submits that the criminal justice system must not hamper and suffer because of the petitioner. Thus, would confine the prayers in the petition to grant of bail on the petitioner's surrendering before the majesty of the concerned court, and reserving liberty to raise the given-up relief in the subsequent petition(s), if the need so arises.

3. Id. counsel appearing for the State has strenuously opposed this petition, including the limited relief as confined by the petitioner.

4. Given above, this court is confining the adjudication of this matter to the extent mentioned herein before, reserving the liberty to the petitioner as prayed.

5. The gist of the facts relevant to decide the remaining prayer is as follows:-

That after dishonor of the cheque the complainant filed a complaint under 138 of Negotiable Instruments Act against the present petitioner. The trial Court took cognizance of the offence and summoned the petitioner. Subsequently the trial Court issued bailable warrants and later on non-bailable warrants. Vide impugned order dated 26.04.2019, the trial Court proceeded under Section 83 Cr.P.C. and asked for the affixation of proclamation warrants. Vide order dated 04.10.2019, the

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accused/petitioner was declared as proclaimed offender. Later on an FIR under Section 174 A of Indian Penal Code was also registered against the petitioner.

6. Challenging the issuance of proclamation order and consequent proceedings the petitioner has come up before this Court under Section 482 Cr.P.C.

7. In para 2 of the petition, the petitioner explained that the petitioner is living with his wife at her house in Kurukshetra but was declared proclaimed offender without his knowledge. He submitted that he was never served at his address. Although the explanation offered by the petitioner is sketchy and is not convincing at all. Still in the interest of justice and keeping in view the nature of offences, this Court proposes to dispose of the present petition with the below mentioned terms.

8. The primary object of service is to secure the accused's presence in trial. The petitioner has approached this court on its own, which establishes the bonafide at this stage. Without adjudicating the explanation offered and stand taken by the petitioner, this court, in the exercise of its inherent powers under section 482 CrPC, deems it appropriate to grant the following limited relief to the petitioner, subject to the compliance of the conditions mentioned in this order.

9. In the present case, the maximum sentence imposable for the offences mentioned in FIR does not exceed seven years. Thus, directions passed in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, (Para 13), apply to this petition, wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest the accused automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

10. The possibility of the accused henceforth not attending the trial, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In Sumit Mehta v. State of N.C.T. of Delhi, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

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11. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case, and also for the reasons mentioned above, the ends of justice would meet with the following order.

12. **The petitioner shall surrender before the concerned court within thirty days from today. On appearance, the concerned court shall release the petitioner on bail on the same day, subject to furnishing bail bonds to its satisfaction and imposing additional conditions, as it may deem appropriate in the background of the accused's conduct.**

13. The petitioner to execute a bond for attendance in the concerned court. On the reverse page of personal bonds, the petitioner shall mention the permanent address, along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

14. **There shall be a stay of the petitioner's arrest in the case mentioned above for thirty days;** however, if the petitioner fails to appear within the time stipulated above, then stay on arrest shall stand vacated without any further reference to this court. It is clarified that if the petitioner appears before the concerned court, then all warrants issued by the concerned court against the petitioner, in the matter mentioned above shall stand recalled and canceled.

15. **Within thirty days from today,** the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned before. The petitioner shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating officer asks to share the location, the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, calls nor format the phone without permission of the concerned SHO/I.O. This condition shall continue till the completion of the trial or closure of case, whatever is earlier.

16. **Within thirty days from today,** the petitioner shall deposit a sum of rupees ten thousand in 'High Court Lawyers Welfare Fund,' Account number 65018692589, SB, IFCI code SBIN0050306, Branch Code 50306, Branch Address State Bank of India, High Court Branch, Sector 1, Chandigarh. After depositing, the petitioner shall file the proof of deposit, before the concerned court and send its copy alongwith a copy of this order to the Secretary, Punjab & Haryana High Court Bar Association, either in physical or electronic mode.

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17. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

18. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

19. *There would be no need for a certified copy of this order, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition partly allowed to the extent mentioned above. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

05.04.2022
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Whether speaking/reasoned: Yes
Whether reportable: NO.