

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

302

CRM-M-28357-2022 (O&M)

Date of Decision: 22.11.2022

ASHOK KUMAR DHIMAN

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vinay Kumar Pandey, Advocate for the petitioner.

Mr. Vijesh Sharma, Additional AG Haryana.

HARNARESH SINGH GILL, J.(Oral)

Prayer in this petition is for quashing of the order dated 26.09.2000 passed by the learned Judicial Magistrate, 1st Class, Yamuna Nagar, vide which the petitioner has been declared as a proclaimed offender in FIR No.22 dated 13.01.1996, registered under Sections 279, 337 and 338 IPC, at Police Station City Yamuna Nagar, along with all the consequential proceedings arising therefrom.

Learned counsel for the petitioner submits that the petitioner was regularly appearing before the trial Court but due to some unavoidable circumstances, he could not appear on 04.05.1999 and accordingly, his surety/bail bonds were cancelled and forfeited to the State, and non-bailable warrants against the accused-petitioner and notice to his surety under Section 446 Cr.P.C. were issued for 26.07.1999. It is, thus, submitted that non-appearance of the petitioner was neither intentional nor wilful.

Learned counsel for the petitioner further submits that while

declaring the petitioner as the proclaimed offender, the provisions of Section 82 Cr.P.C. have not been complied with, inasmuch as, the petitioner was working in a private company at Delhi but the proclamation warrants were executed at the Yamuna Nagar address and that as per the report of the Serving Constable, when he went to execute the proclamation warrants, Ashok Kumar (the petitioner) could not be found at the given address and even on enquiry, his whereabouts were not found and thus, the proclamation warrants were pasted on the main gate of the said house. He further submits that, though, as per the report of the Serving Constable, the petitioner was not found at the given address, yet he has been declared as the proclaimed offender on 26.09.2020 by the Court below.

In support of his contentions, learned counsel for the petitioner relies upon the order dated 23.06.2021 passed by this Court in CRM-M-23438-2021 titled as Priya Bhatia vs State of Haryana and anr.

Per contra, while opposing the prayer made in this petition, learned State counsel submits that the petitioner has been absconding from the Court of law since 04.05.1999 and thus, he does not deserve any concession, at this belated stage.

I have heard the learned counsel for the parties.

It is a case, wherein, the petitioner had been regularly appearing before the Court, but he could not appear on a solitary date i.e. 04.05.1999, due to some unavoidable circumstances and thus, his non-appearance on the said date was unintentional.

As per the report of the Serving Constable, the petitioner

was not found at the given address, yet he has been declared as the proclaimed offender vide impugned order.

The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and judgments as are passed qua the accused. If the accused shows his sincere intention and desire to appear before the Court, then it would not be unjustified to protect him from being arrested.

Though the petitioner absented himself from the Court proceedings, yet he is now not required for any investigation or interrogation purposes and rather, he is only to face the trial. Therefore, no useful purpose would be served by sending the petitioner to custody.

Keeping in view the above fact, but without expressing any opinion on the merits of the case, the present petition is allowed and the order dated 26.09.2000 passed by the learned Judicial Magistrate, 1st Class, Yamuna Nagar, along with all the consequential proceedings arising therefrom, are hereby set aside, subject to the petitioner depositing the costs of Rs.50,000/- with the concerned District Legal Services Authority

The petitioner to directed surrender before the trial Court/Duty Magistrate, within a month from today and on his doing so, he shall be released on bail, subject to him furnishing fresh bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate.

22.11.2022

Aman Jain

(HARNARESH SINGH GILL)
JUDGE

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