

Gurlal Singh ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Dinesh Nagar, Advocate for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

ANOOP CHITKARA, J.

Complaint No.	Dated	Sections
COMI/145/2015	06.08.2015	279, 337, 338, 304-A & 427 IPC

1. Challenging the order of proclamation on being declared a proclaimed offender, the petitioner has come up before this court under section 482 of Code of Criminal Procedure, 1973 (CrPC) for quashing of complaint and summoning order.
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. Ld. 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 that Amritpal Kaur wife of Late Gurmit Singh filed a criminal complaint against the petitioner Gurlal for the commission of the offences captioned above. Based on the such complaint the police registered the above-mentioned FIR. Ld. Judicial Magistrate took cognizance and issued summons against the petitioner which could not be served. After that bailable and non-bailable warrants also remain unexecuted. Subsequently vide order dated 24-11-2017, the petitioner was declared a proclaimed offender.

6. In paragraph 3 of the petition, the petitioner offers the following explanation for non-appearance, which read as follows:

“That the complainant knowing well that petitioner is not residing at his Indian address and has been staying abroad for last so many years: Intentionally and willy in order to extract undue illegality gave address of the petitioner as of India address. Service upon the petitioner was not affected on the given Indian address. It is worth to mention over here that in the service report dated 03-04-2017 of the process server Amarjit Singh had specifically written that petitioner Gurial Singh is residing abroad in America (USA). For the kind perusal of this Hon'ble Court, the service report dated 03-04-2017 of the process server is annexed herewith as P-3. It is worth to mention over here that the Ld. Magistrate ignoring the service report dated 03-04-2017 of the process server Amarjit Singh wherein he specifically written that petitioner Gurial Singh is stated to have been residing abroad America (USA), had ordered service through publication initially in a News paper "Indian Express" vide order dated 07-04-2017 and lateron vide order dated 15-07-2017 "The Pioneer". True copies of these ordered after downloaded from the official site of the Ld. Court below are annexed herewith as Annexure P-4 & P-5 respectively. Hence on account of petitioners' non availability at the given address, he was proceeded against resulting into passing of impugned order dated 24-11-2017 of declaring him as PO. True copy of the impugned order dated 24-11-2017 declaring him as PO is annexed herewith as Annexure P-6. The said process adopted by Id. Magistrate in declaring the petitioner as Proclaimed person is perse illegal, unjustified, arbitrary and unheard of in criminal jurisprudence rather flagrant violation of principle of Natural Justice. It is further worth to mention over here that as per Google, the Editor of "The Pioneer" News paper claims its total circulation is 2,30,000 only which is being published in English & Hindi only that too in the following cities Delhi, Lucknow, Bhopal, Bhubneshwar, Chandigarh, Raipur, Dehradun, Ranchi, Telangana, Lucknow edition includes four other editions Varanasi, Kanpur, Allahabad itself. The said news paper did not even have its circulation in Punjab what to talk of Hoshiarpur and its remote villages.”

7. The explanation offered in paragraph 3 is satisfactory. However, 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. 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.

8. 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

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imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

9. 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.

10. 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.

11. The petitioner shall surrender before the concerned court on or before May 31, 2022. 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.

12. 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.

13. **There shall be a stay of the petitioner's arrest in the case mentioned above up to 31 May 2022;** 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, including all further proceedings in the matter mentioned above shall stand quashed, recalled and canceled.

14. **By 31 May 2022,** 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

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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.

15. **By 31 May 2022**, 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.

16. 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.

17. 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.

18. *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.