

**IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH**

CRM-M No. 40628 of 2022

Date of decision : September 07, 2022

Gaurav Nirwania

..... Petitioner

Versus

Raja Gears Pvt. Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Ms. Mannat Anand, Advocate
for the petitioner.

Pankaj Jain, J (oral).

The petitioner is a proclaimed person. He has been summoned to face trial under Section 138 of the Negotiable Instruments Act, 1881. He has been declared a proclaimed person vide impugned order dated 11.7.2022. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of the said order. As per the pleadings it is not for the first time that he has been declared a proclaimed offender. Earlier he was declared a proclaimed offender on 6.8.2018 after he absented himself from the trial on 26.3.2018. He approached this Court seeking pre-arrest bail vide CRM-M-53035 of 2019 which was disposed off vide the following order dated 10.02.2020:-

“The petitioner prays for grant of anticipatory bail in complaint case bearing No. NACT/149/2014 dated 15.03.2014 filed under Section 138 of N.I. Act read with Section 420 IPC, titled as Raja Gears Vs. Gaurav.

On 12.12.2019, the following order was passed:

“Learned counsel for the petitioner submits that the petitioner has put in appearance before the trial Court and was regularly facing the trial, however, he absented from the Court proceedings on 26.03.2018. Thereafter, his bail/surety bonds were cancelled and later on, he was declared a proclaimed person on 06.08.2018. It is further submitted that on account of unavoidable circumstances, he could not appear before the Court.

Notice of motion for 10.02.2020.

In the meantime, the petitioner is directed to appear before the trial Court within a period of 10 days from today and the trial Court will release him on interim bail subject to his furnishing fresh bail/surety bonds and on payment of costs of Rs.5,000/- to be paid to the complainant-respondent No.2.”

Learned counsel for the petitioner submits that the petitioner, in pursuance to the order dated 12.12.2019, the petitioner has appeared before the trial Court and he has been released on interim bail. It is further submitted that the petitioner has also made the payment of Rs. 5,000/- to respondent No. 2/complainant, which is not disputed by learned counsel for respondent No. 2/complainant.

In view of the above, the petition is allowed and order dated 12.12.2019 is made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.”

As per the petitioner, on 26.2.2020 when he appeared before the trial court the matter was adjourned to 13.03.2020 to await the orders passed by this Court in CRM-M-53035 of 2019. On 13.3.2020 again the matter was adjourned for the same purpose to 15.4.2020. On 15.4.2020 the Courts were closed owing to the pandemic Covid-19. As per the pleadings raised in the petition the first effective date was 10.7.2020 but the petitioner failed

to appear. On that day the orders passed by the High Court were received.

The matter was restored and adjourned to 18.9.2020. It has been further pleaded that after restoration the matter again could not be taken on 18.9.2020 due to the second wave of Covid-19. It is only on 27.01.2021 that the matter was effectively taken up for the first time but the petitioner failed to appear. The reason pleaded is that the petitioner was never in the knowledge that the courts have started functioning normally. Admittedly, notice was issued to the petitioner as well as his counsel for 17.03.2021. However, the petitioner still failed to appear. The reason pleaded is that since the petitioner had left his earlier address he could not be served. On the said date warrants of arrest were issued for 3.6.2021. Thereafter the matter could be taken up only on 31.8.2021 when fresh warrants were issued to secure presence of the petitioner for 21.10.2021. Again the matter was adjourned to 5.1.2022 and the warrants remained un-executed. Finally the petitioner was declared proclaimed person after following due procedure on 11.7.2022. Suddenly, the petitioner woke from the slumber in the first week of August, 2022 and called his counsel to know about the status. After he was informed about the orders passed, the petitioner sought pre-arrest bail which stands dismissed vide order dated 5.8.2022.

Now the petitioner is before this Court invoking jurisdiction of this Court under Section 482 Cr.P.C. Conduct of the petitioner is written large on the record. He has successfully delayed trial for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 for last more than eight years.

Trite it is that the jurisdiction under Section 482 Cr.P.C can be

invoked only under the following circumstances:-

- i) to give effect to an order under the Code'
- ii) to prevent abuse of the process of court, and
- iii) to otherwise secure the ends of justice.

The conduct of the petitioner does not warrant any interference under Section 482 Cr.P.C. From the facts of the case it is evident that he has been playing hide and seek with the process of law and has succeeded to some extent as well to evade the same. Thus, no ground is made out to exercise jurisdiction under Section 482 Cr.P.C. However, keeping in view the circumstances of the present case and the objective that trial be not delayed further, the petitioner is granted an opportunity to appear before the trial court within a period of two weeks from today and apply for bail. On his doing so, the trial court shall decide his bail application within a period of seven days.

Accordingly, the present petition is disposed off.

(PANKAJ JAIN)
JUDGE

September 07, 2022

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Whether speaking/reasoned Yes

Whether Reportable No