

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42315-2022

Date of decision : 15.09.2022

Gaurav Nirwania

..... Petitioner

versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Nupur Sood, Advocate
for the petitioner.

PANKAJ JAIN, J. (Oral)

The petitioner was declared proclaimed offender on 06.08.2018 after he absented himself from the trial on 26.03.2018.

2. 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.”

3. 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.

4. The petitioner was again declared proclaimed person on 11.07.2022. The said order was challenged by way of petition under Section 482 Cr.P.C. i.e. CRM-M-40628-2022. This Court found that though there is no ground to exercise jurisdiction under Section 482 Cr.P.C., yet the petitioner was granted an opportunity to appear before the trial Court within a period of two weeks and apply for the bail. Trial Court was further directed to decide the bail application within a period of seven days and operative part of the order reads as under:-

“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.”

5. Now the petitioner has approached this Court by way of present petition filed under Section 438 Cr.P.C., seeking pre-arrest bail.

6. In view of the aforesaid facts and circumstances, when the petitioner has already been granted time to appear before the trial Court and the trial Court has been directed to decide the bail application within stipulated period of time, no ground to entertain the present petition is made out.

7. Consequently, the present petition is dismissed as misconceived.

(PANKAJ JAIN)
JUDGE

15.09.2022

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No