

CRM-M-45283-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

124

CRM-M-45283-2022

Date of Decision: November 11, 2022

Pawittar Singh @ Pavittar Deep Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Amit Dhawan, Advocate
for the petitioner.

AMAN CHAUDHARY, J.

The present petition under Section 482 of the Cr.P.C. has been for quashing the impugned order dated 22.03.2004 (Annexure P-2), passed by Judicial Magistrate Ist Class, Nakodar whereby the petitioner has been declared as proclaimed offender in case FIR No.117 dated 10.06.2002 registered under Sections 307, 323, 148, 149 IPC and Section 25, 27, 54-A, 59 of Arms Act (lateron Sections 307, 25, 27, 54-A and 59 of Arms Act were deleted) and challan was submitted only under Sections 323, 148 and 149 IPC at Police Station Shahkot, District Jalandhar on the basis of compromise.

Learned counsel submits that FIR was registered against the petitioner and his co-accused on 10.06.2002, Annexure P-1. Learned counsel further submits that though the FIR had been registered under Section 307 as well, however, the Police had deleted the said section and for the other sections he had furnished bail bonds with the Investigating Agency

on 05.10.2002. It is his submission that compromise having been arrived at between the parties, the petitioner as per his understanding being no longer required in the case, left for abroad for earning livelihood for himself and his family. He being an illegal immigrant in Belgium had no valid travel documents to return to India, which he got on 16.03.2019, reliance is placed on his passport appended along with the Vakalatnama. The co-accused of the petitioner involved in the aforesaid FIR were acquitted by the trial Court vide judgment dated 08.07.2005, Annexure P-3 as neither the complainant nor the prosecution witnesses support the version of the prosecution. Learned counsel also refers to affidavit dated 11.05.2010, Annexure P-5 executed by the complainant-Sukhdev Singh affirming the factum of compromise. The complainant executed yet another affidavit dated 27.08.2022, Annexure P-8 wherein he had stated in para 5 that he has no objection in case order dated 22.03.2004 declaring the petitioner as proclaimed offender and the above FIR and consequential proceedings are quashed by this Court. It is the submission of learned counsel for the petitioner that the order dated 22.03.2004 declaring him proclaimed offender was based on proceedings carried out in India while the petitioner was abroad from the year 2002 itself. Learned counsel further submits that when the challan was filed on 12.11.2003 before the Court, the Investigating Officer had submitted before the Court that the petitioner was abroad which was so recorded in the order of the said date as passed by the trial Court.

Learned counsel has also produced the air ticket of the

petitioner who he states is traveling to India on 20.11.2020. The said document is taken on record as mark 'A'.

He, however, submits that the petitioner is ready and willing to join the proceedings, and prays that one opportunity may be granted to surrender before the learned trial Court which may even be, subject to payment of costs. In support of his arguments learned counsel for the petitioner relies upon the orders of this Court in CRM-M-38277-2022 dated 26.08.2022, in the case of “Surjit Singh Vs. State of Punjab”, CRM-M-39000-2022, titled as Raghav vs. State of Punjab, decided on 9.9.2022 and Major Singh vs. State of Punjab, CRM-M-36490-2022, decided on 15.9.2022.

Notice of motion.

Mr. Manipal Singh Atwal, DAG, Punjab, accepts notice on behalf of respondent-State and Mr. Abhimanyu Vinayak, Advocate accepts notice on behalf of respondent No.2.

Learned State counsel opposes the same and submits the impugned order has been rightly passed by the learned trial Court. He submits the petitioner was duly arrested and released on bail and he had furnished the bail bonds with the Investigating Officer therefore, it was well within his knowledge that the proceedings were pending before him and without seeking any prior permission he left for abroad and therefore, was rightly declared proclaimed offender.

Learned counsel for the complainant affirms the facts as stated by learned counsel for the petitioner and submits that he has instructions from his client who has no objection to allowing the present petition.

Heard the arguments advanced by learned counsel for the parties.

The explanation offered by the petitioner for his non-appearance in this case before the trial Court seems to be justified. Moreover, the very purpose of issuance of non-bailable warrants, is to compel and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

This Court in *Major Singh vs. State of Punjab, CRM-M-36490-2022*, decided on 15.9.2022, in somewhat similar circumstances, while setting aside the order, observed thus:

Conclusion:-

This Court while noticing the bonafide of the petitioner; explanation given for his absence being justified; the object to be achieved being to secure the presence of the petitioner in the proceedings; expedition of trial and its early culmination being in the interest of the parties; in order to meet the ends of justice; judgments referred to above being applicable to the instant case, is allowing this petition, though deeming it appropriate to impose certain conditions for meticulous adherence at the hands of the petitioner. In view of the forgoing conclusion and in the peculiarity of the facts and circumstances of the case, as also held by the Coordinate Bench of this Court in the cases of Naveen Rao (supra) and **Dimple Kumar** (supra) and in the interest of justice, the impugned order dated 19.7.2022, Annexure P5, is hereby set aside.”

In view of the facts and circumstances of this case and the judgments referred to above, the impugned order dated 22.03.2004, Annexure P-2, is set aside, subject to deposit of Rs.25,000/- with the Poor Patients Welfare Fund, PGIMER, Chandigarh, <https://pgimer.edu.in/>. The petitioner is directed to surrender before the trial Court on or before 24.11.2022 and furnish his fresh bail/ surety bonds. On so doing, the trial

Court shall release him on bail by imposing surety to its satisfaction. He is also directed to furnish an undertaking by way of his affidavit that he will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. He shall also surrender his passport and will not leave the country without prior permission of the Court or the trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

Before parting with this order, it is made abundantly clear that in case the petitioner does not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

November 11, 2022
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(AMAN CHAUDHARY)
JUDGE

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