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IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

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Date of decision:-04.05.2022

Sukhwinder Singh @ Sokhal and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr.Umesh Aggarwal, Advocate for the petitioners

Mr. Harsimar Singh Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
36	04.04.2018	Lopoke Amritsar Rural	379/409/34 IPC, 1860 and Section 21 of Mines and Minerals (Regulations of Developments Act 1957) and Section 13-A of Punjab Village Common Land Regulation Act, 1961

1. Challenging the order of proclamation on being declared a proclaimed offender, the petitioners have come up before this court under section 482 of Code of Criminal Procedure, 1973 (CrPC).
2. The accused could not be served through the ordinary process, including summons,ailable warrants, and even non-ailable warrants. The concerned court finally proceeded against the petitioners under section 82 of CrPC and declared the petitioners a proclaimed offender vide order dated 01 Nov 2018, passed by Ld. JMIC Ajnala, Punjab.
3. After arguing for considerable time, ld. counsel for the petitioners submits that the criminal justice system must not hamper and suffer because of the petitioners. Thus, would confine the prayers in the petition to grant of bail on the petitioners' 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.
4. Ld. counsel appearing for the State has strenuously opposed this petition, including the limited relief as confined by the petitioners.

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5. Given above, this court is confining the adjudication of this matter to the extent mentioned herein before, reserving the liberty to the petitioners as prayed.

6. In paragraph 6, the petitioners offer the following explanation for non-appearance, which read as follows:

“That it is important to here that, the Petitioners were not aware about the fact that their name were also involved in the present FIR. As, neither the Petitioners were ever served any notice by the police nor warrants were served upon the Petitioners. That on 30.11.2021, the Petitioners came to know that their names are also added in the FIR, as one co-accused namely Davinder Singh was arrested in the present FIR after 3 years. Moreover, the Petitioners were wrongly declared as Proclaimed Persons by the Ld. Judicial Magistrate 1st Class, at Ajnala vide its order dated 01.11.2018.”

7. The primary object of service is to secure the accused's presence in trial. The petitioners have approached this court on its own, which establishes the bonafide at this stage. Without adjudicating the explanation offered and stand taken by the petitioners, this court, in the exercise of its inherent powers under section 482 CrPC, deems it appropriate to grant the following limited relief to the petitioners, 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 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.

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 petitioners shall surrender before the concerned court within ten days from today. On appearance, the concerned court shall release the petitioners 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.

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12. The petitioners to execute a bond for attendance in the concerned court. On the reverse page of personal bonds, the petitioners 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 petitioners 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 petitioners' arrest in the case mentioned above for ten days;** however, if the petitioners fail 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 petitioners appear before the concerned court, then all warrants issued by the concerned court against the petitioners, in the matter mentioned above shall stand recalled and canceled.

14. **Within ten days from today,** the petitioners shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned before. The petitioners shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating officer asks to share the location, the petitioners shall immediately do so. The petitioners 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. **Within ten days from today,** the petitioners shall deposit a sum of rupees ten thousand each in 'High Court Lawyers Welfare Fund,' Account number 65018692589, SB, IFCL code SBIN0050306, Branch Code 50306, Branch Address State Bank of India, High Court Branch, Sector 1, Chandigarh. After depositing, the petitioners shall file the proof of deposit, before the concerned court and send its copy along with 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 petitioners and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioners understand.

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 Petitioners can download this order along with case status from the official web page of*

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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

04.05.2022
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Whether speaking/reasoned:	Yes
Whether reportable:	No.