

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

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CRM-M-50216-2022 (O&M)

Date of decision: 14.11.2022

NITIN JINDAL

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ankur Bansal, Advocate
for the petitioner.

Mr. Manipal Singh Atwal, DAG Punjab.

Mr. Keshav Chadha, Advocate
for the complainant.

AMAN CHAUDHARY. J.

Present petition has been filed for setting aside/quashing of entire proclamation proceedings initiated against the petitioner including the issuance of non-bailable warrants of arrest issued vide order dated 03.03.2021 and order dated 22.04.2022 directing issuance of proclamation against the petitioner passed by learned Special Judge, Jalandhar in case SC/17/2017 titled as Surjit @ Bholi Vs. Sudha Chopra and others.

Learned counsel contends that the complaint dated 29.01.2014 was filed against the petitioner and some other persons, Annexure P-1, wherein he was summoned by the trial Court vide order dated 12.02.2016, Annexure P-2. This Court vide order dated 27.06.2016 granted him anticipatory bail with a direction to appear before the trial Court. After having appeared he was admitted to bail, consequent thereto this Court vide order dated 31.07.2017 made the interim order absolute and disposed of the petition.

Learned counsel further contends that charges were framed against

the petitioner vide order dated 17.01.2017, whereafter he continued to appear before the trial Court and contested his case tooth and nail. It is when the case was adjourned due to outbreak of Covid-19 pandemic, the petitioner belonging to poor family having no source of income, with a view to find a source of income to sustain his family, went to Moscow as a labourer in April 2020 from where he left for Spain. It is submitted by the learned counsel while referring to averments made in para 7 and 8 of the petition that the passport of the petitioner was taken by his employer in Spain so that he cannot flee the said country. It was due to the aforesaid fact that petitioner was unable to come to India to attend the Court proceedings. It was only on the intervention of NGO in Spain that the petitioner was able to recover his passport from his employer and with their help came back to India on 22.09.2022. However, on reaching the Airport at New Delhi, his passport was found tampered having annexed fake pages by his employer in Spain, which was not in the knowledge of the petitioner, consequently, FIR No.405 dated 22.09.2022 under Section 420, 468, 471 IPC read with Section 12 of the Passport Act was registered at Police Station IGI Airport New Delhi, wherein he was arrested and granted bail on 24.09.2022 and thereafter he returned to his hometown Jalandhar. It is thereafter that he became aware that non-bailable warrants had been issued in his absence by the trial Court vide order dated 03.03.2021 (Annexure P-7). Non-bailable warrants were issued against the petitioner vide orders Annexures P-7 and P-8. Vide order dated 22.04.2022, Annexure P-4 proclamation proceedings were directed to be initiated against the petitioner and it is stated that fresh proclamation proceedings be initiated vide order dated 23.09.2022 for 24.09.2022, wherein proclamation warrants had not been received back with any report. Learned counsel submits that on 29.10.2022,

the case has now been adjourned to 23.11.2022 for recording of statement of serving official who affixed the proclamation. It is his further submission that during the interregnum the compromise dated 14.10.2022, Annexure P-11 has also been entered into between the parties, with the intervention of respectables of the area. He submits that in pursuance thereto petition for quashing of complaint based on compromise is also being filed.

Learned counsel submits that non-appearance of the petitioner before the trial Court in the proceedings is neither willful nor deliberate but for reasons aforesaid. He prays for one opportunity to be granted to him to appear and surrender before the trial Court. To buttress his submission, he places reliance on the judgments of Coordinate Benches of this Court in **Gurbir Singh Mundi vs. State of Punjab and another** CRM-M-49283-2021, decided on 16.12.2021, **Hardev Kaur vs. State of Punjab** 2018(2) Law Herald 1256 and **Jasbir Kaur vs. State of Punjab and another**, CRM-M-25115-2022, decided on 2.6.2022.

Notice of motion.

Learned State counsel submits that the proclamation proceedings were rightly initiated and without seeking permission of the Court the petitioner had left the country.

Mr. Keshav Chadha, Advocate appears on behalf of the complainant and affirms the factum of compromise, wherein it is also mentioned that the second party has no objection if order of issuance of warrants of arrest and proclamation proceedings against the petitioner are quashed to facilitate quashing of proceedings/complaint. The complainant has also sworn duly attested affidavit with regard to authenticity and genuineness of the compromise.

Heard learned counsel for the parties.

In the case of **Gurbir Singh Mundi** (supra), it was held that provisions of Section 82(2) Cr.PC. are to be mandatorily complied with cumulatively and not alternatively. The Court had quashed the order declaring the petitioner therein as proclaimed person on the ground that declaration was not read publicly in some conspicuous place of town or village, in which the accused ordinarily resides.

In re: **Hardev Kaur's** case (supra) , the order of proclamation was set aside in a case, where the compromise between the parties had been arrived at and no objection had been given by the complainant for setting aside the same.

In the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Indian Resident lady residing in Canada and proclamation proceedings had been initiated while she was not in India, as such, the order of proclamation was set aside.

The very purpose of issuance of non-bailable warrants, is to secure the presence of the accused to face trial and establish the rule of law, so as to ensure finalization of the proceedings.

In the case in hand, the explanation offered by the petitioner for his non-appearance before the appellate Court seems to be justified. It cannot be construed as a deliberate and willful absence. Moreover, the matter has since been amicably settled between the parties.

This Court in ***Parminder Kaur Motay Vs. State of Punjab and another***, CRM-M-49863-2022 decided on 31.10.2022 in somewhat similar circumstances, while setting aside the order, observed as under:-

“Adverting to the facts of the present case, the proclamation proceedings without effecting service upon the petitioner, who was residing abroad, were not justified. However, still it is

incumbent upon her to join the proceedings, for the culmination of the same. Considering the fact that the absence of the petitioner being not willful or deliberate and her readiness and willingness to surrender; for which she is stated to be travelling to India; the dispute between the parties also having been compromised; based on which, even the FIR in question, qua other co-accused, i.e. her father and other family members, stands already quashed by this Court and a similar petition filed by the petitioner is pending; the fact that even the first motion statements of the petitioner made through her father, as her attorney holder and of the complainant-respondent No.2 have also been recorded on 10.10.2022, in the divorce petition filed by him; counsel for respondent No.2, who has caused appearance in the present matter, has also affirmed all the facts as stated by the learned counsel for the petitioner, to be correct; has given his no objection to the prayer made in the present petition, thus, no prejudice shall be caused to any of the parties, in case the petitioner is granted one opportunity, to surrender before the trial Court. Therefore, in order to secure the ends of justice and finding judgments referred to above, being applicable to the instant case, the present deserves to be allowed.”

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:

“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.”*

A Coordinate Bench of this Court **Naveen Rao's** case (supra) has held thus:-

“In the present case also, the bail/surety bonds have been cancelled as the petitioner left India without prior permission of the Court. An application for exemption from personal appearance was also moved, which was dismissed. The petitioner is NRI and he went abroad without seeking any permission from the Court, which has been stated to be inadvertent as he did not go through the terms and conditions of bail but the circumstances were beyond his control. The petitioner immediately came back to India and came to know that his bail bonds have been cancelled. There was no intention on his part to remain absent or to avoid the Court proceedings. The petitioner remained ill when he was abroad, remained there for a period of 20 days and could not come back immediately.”

In view of the facts and circumstances of this case and the judgments referred to above, entire proclamation proceedings initiated against the petitioner including the issuance of non-bailable warrants of arrest issued vide order dated 03.03.2021 and order dated 22.04.2022 directing issuance of proclamation against the petitioner passed by learned Special Judge, Jalandhar, is set aside. The petitioner is directed to surrender before the trial Court on or before 23.11.2022,

before the trial Court and furnish his fresh bail/surety bonds. On doing so, 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.

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.

(AMAN CHAUDHARY)
JUDGE

November 14, 2022

S.Sharma(syr)

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