

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

120

**CRM-M-53486-2022 (O&M)
Date of decision: 18.11.2022**

BHAJAN SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ravi Malhotra, Advocate
for the petitioner.

Mr. Gurdarshan Sidhu, AAG Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed for quashing of FIR No.105 dated 07.09.2018 under Sections 323, 324, 436, 34 IPC (Sections 307, 326, 325 IPC added later on) registered at Police Station Bilga, District Jalandhar and order dated 20.02.2019 passed by Judicial Magistrate First Class, Jalandhar, whereby the petitioner has been declared proclaimed offender.

At the outset, learned counsel for the petitioner restricts his prayer only regarding setting aside order dated 20.02.2019, declaring him proclaimed offender, reserving his right to file a separate petition for quashing of the FIR.

Learned counsel contends that the FIR was registered against the petitioner on 07.09.2018, whereas the petitioner had left for abroad a day prior i.e. 06.09.2018. Assertion in this regard is made in para 4 which has been affirmed by the affidavit of the petitioner. He thus submits that he had no knowledge whatsoever with regard to the FIR for reason that he was not named in the FIR and it is only subsequently that in the disclosure statement made by co-accused Satnam Singh that name of the petitioner had surfaced. He further submits that no

summons/warrants were served upon the petitioner. He also refers to para 8 of the petition to submit that even 30 days' period as required under Section 82 CrPC had not yet elapsed as is borne out from order Annexure P-4, wherein it finds mention that the case was adjourned on 21.12.2018 to 29.01.2019 for the said period to be completed. He further submits that the petitioner is travelling to the country and shall reach on 27.11.2022, in order to surrender before the Court concerned. Learned Counsel submits that in view of the impugned order having been passed against the petitioner, he is apprehending his arrest on reaching India and prays that till the time he surrenders before the Trial Court, his arrest may be stayed, in light of the order dated 06.02.2020 passed by this Court in CRM-M-32011-2018 titled as **Jaswant Singh vs. State of Punjab and another**. It is his submission that the petitioner is ready and willing to surrender before the Court concerned for which only one opportunity is being sought, which may even be subject to costs.

Notice of motion.

Mr. Gurdarshan Sidhu, AAG Punjab accepts notice on behalf of respondent State and states that the petitioner has been rightly declared as proclaimed offender on account of his non-appearance.

Heard.

It is apposite to make a reference to the judgment of this Court in the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Indian Resident residing in Canada and proclamation proceedings had been initiated while she was not in India, as such, the order of proclamation was set aside.

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

In re: **Narinder Kaur's case (supra)**, wherein the dispute had been compromised between the parties, this Court ordered the petitioner, who was declared a proclaimed person while she was living abroad, to surrender before the trial Court, upon which she was to be released on bail.

Similarly, in the case of **Jaswant Singh (supra)**, this Court in the interim order dated 10.9.2018, noticed the submission made by the counsel for the petitioner relying on the photocopy of the passport (Annexure A-1) that the petitioner was not in India at the time of registration of FIR on 29.10.2009, as well as, on the day, when he was declared proclaimed offender vide order dated 28.4.2014 and even on the date of passing of the above order, as he was in Italy, directed him to surrender before the trial Court, upon which interim bail was ordered to be granted to him. This Court vide order dated 6.2.2020 though declined the prayer for quashing of FIR made in the petition, but, with regard to the order declaring him a proclaimed offender, directed him to surrender before the trial Court and file an application for regular bail, however, till then he was ordered to be not arrested. He however challenged the said order inasmuch as this Court had declined his prayer for quashing of the FIR, wherein Hon'ble The Supreme Court of India vide an interim order dated 24.09.2021 passed in SLP (Crl.) No.7072 of 2021, ordered not to take coercive steps against him. Subsequently, vide judgment dated 20.10.2021, the Criminal Appeal no. 1233 of 2021(SLP(Crl.) No.7072 of 2021) was allowed and FIR was quashed, in para 8 whereof it was mentioned that, he had surrendered on 27.10.2018, whereafter he was admitted to interim bail.

The very purpose of issuance of summons, warrants, taking out proceedings of proclamation etc. 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.

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 him 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 his readiness and willingness to surrender; for which he is stated to be travelling to India. 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 restricted prayer of the petitioner regarding PO proceedings deserves to be allowed.

In view of the peculiarity of the facts and circumstances of this case and the judgments referred to hereinabove, consequently and as a sequel thereto, the present petition is disposed of by setting aside order dated 20.02.2019 passed by Judicial Magistrate First Class, Jalandhar. subject to deposit of Rs.25,000/- with the Bar Clerks Association, Punjab and Haryana High Court Chandigarh. However, in case the petitioner surrenders before the trial Court on or before 02.12.2022 and files an application for regular bail, the same be decided on the same day. Till then no coercive steps be taken against him. 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.

It is also made clear that liberty as sought by the petitioner to file a

separate petition for quashing of FIR, is accorded.

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

(AMAN CHAUDHARY)
JUDGE

November 18, 2022

S.Sharma(syr)

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