

CRM-M-55179-2022

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

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CRM-M-55179-2022

Date of Decision: November 29, 2022

Dharaminder Singh @ Binda

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. H. S. Deol, Advocate
for the petitioner.

AMAN CHAUDHARY, J.

The present petition under Section 482 of the Cr.P.C. has been filed for quashing the impugned order dated 12.02.2018 (Annexure P-2), passed by Judicial Magistrate Ist Class, Shaheed Bhagat Singh Nagar, whereby the petitioner has been declared as proclaimed person.

Learned counsel contends that FIR No.175 dated 09.12.2016 under Sections 323, 324, 34 IPC (Section 326 IPC added lateron) at Police Station City, Nawanshahar, District Shaheed Bhagat Singh Nagar was registered against the petitioner wherein he was granted bail, however, he left for abroad on 25.02.2017 and returned to India on 16.11.2022. The proceedings declaring him proclaimed person were initiated against him on 18.04.2018, Annexure P-2 while he was abroad. He further submits that the co-accused of the petitioner have been acquitted by the trial Court vide judgment dated 17.02.2020, Annexure P-3.

He draws the attention of this Court to the provision of Section 105 of Criminal Procedure Code (Cr.P.C) that provides for the procedure to serve summons and warrants to accused residing outside India. A further reference is made to a Notification issued by the Government of India Ministry of Home Affairs, IS Division-II:Legal Cell New Delhi, dated the 11th Feb, 2009, laying down comprehensive guidelines in this regard of reciprocal arrangements to be made by Central Government with the Foreign Governments with regard to the service of summons/warrants/judicial processes.

He, however, submits that the petitioner is ready and willing to join the proceedings, and prays that one opportunity may be granted for the petitioner to surrender before the learned trial Court, which may even be, subject to payment of costs. To fortify his submissions, learned counsel for the petitioner places reliance on the judgments of this Court in CRM-M-49283-2021 titled **Gurbir Singh Mundi vs. State of Punjab and another**, decided on 16.12.2021, **Hardev Kaur Vs. State of Punjab**, 2018 (2) Law Herald 1256 and CRM-M-25115- 2022, titled as **Jasbir Kaur Vs. State of Punjab and another**, decided on 2.6.2022 and CRM-M-38014 of 2022 titled as **Narinder Kaur Vs. State of Punjab and others** decided on 11.10.2022 and CRM-M-32011-2018 titled as **Jaswant Singh vs. State of Punjab and another**, decided on 6.2.2020, order dated 24.09.2021 passed in SLP (Crl.) No.7072 of 2021 filed by the above petitioner-Jaswant Singh, judgment dated 20.10.2021 in Criminal Appeal no. 1233 of 2021 (SLP (Crl.) No.7072 of 2021), which was allowed.

Notice of motion.

Mr. Manipal Singh Atwal, DAG, Punjab, accepts notice on behalf of respondent-State.

Learned State counsel opposes the same and submits that the impugned order has been rightly passed by the learned trial Court. He further submits that the petitioner had appeared before the trial Court and thereafter, absented without permission of the Court after having been granted bail.

Heard.

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.

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.

Adverting to the facts of the present case inasmuch as the petitioner was abroad, thus could not appear before the trial Court, leading to the passing of the impugned order, which appears to be justified explanation of absence. However, it is incumbent upon him to join the proceedings, before the trial Court, 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 and join the proceedings, in case one opportunity is granted to the petitioner, no prejudice shall be caused to any of the parties, rather his joining the proceedings would help expediting the trial. Thus, in order to make the ends of justice meet and finding judgments referred to above being applicable to the instant case, the present petition deserves to be allowed.

In view of the facts and circumstances of this case and the judgments referred to above, the impugned order dated 12.02.2018, Annexure P-2, is set aside, subject to deposit of Rs.10,000/- with the “Social Welfare Fund Committee of Bar Clerks Association Punjab and Haryana High Court, Chandigarh”. The petitioner is directed to surrender before the trial Court on or before 09.12.2022 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.

Disposed of accordingly.

November 29, 2022
Rimpal

(AMAN CHAUDHARY)
JUDGE

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