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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Order reserved on : 25/05/2022
Order pronounced on : 02/12/2022

+ **CRL.M.C. 60/2022 & CRL.M.A. 241/2022**

KALA RAM @ KAMLESH Petitioner
Through: Mr.R. K. Tarun and Mr. Abhay
Solanki, Advs.
versus

THE STATE Respondent
Through: Ms. Richa Dhawan, Addl.PP for State

CORAM:
HON'BLE MS. JUSTICE POONAM A. BAMBA

ORDER
% **02/12/2022**

1.0 Vide this petition u/S.482 Cr.PC, the petitioner has sought for setting aside of order dated 20.11.2021 (**'impugned order'** in short), passed by Ld. Chief Metropolitan Magistrate (**'CMM'** in short), Tis Hazari Court declaring the petitioner as a Proclaimed Offender (**'PO'** in short) in FIR No. 240/2021, u/Ss. 392/34 IPC, PS Desh Bandhu Gupta Road.

2.0 It is submitted that the petitioner has been falsely implicated in the above FIR. On coming to know about his implication, the petitioner filed an application u/S. 438 Cr.PC for anticipatory bail before the Ld. ASJ, Tis Hazari Court, which was dismissed vide order dated 28.09.2021. Subsequently, the petitioner approached this court for anticipatory bail vide

Bail Application no. 3693/2021, which was also dismissed vide order dated 07.10.2021.

2.1 It is further submitted that aggrieved by the above order of this court, the petitioner preferred an SLP bearing No. 8357/2021 before the Hon'ble Supreme Court. Vide order dated 17.11.2021, the said SLP was also dismissed and the petitioner was directed to surrender before the concerned authorities within one week. Accordingly, on 18.11.2021, the petitioner filed an application for surrender before the court of Ld. CMM, along with the copy of the order of the Hon'ble Supreme Court. The petitioner was directed to supply copy of the application to the State and the matter was put up for consideration for 22.11.2021. On 22.11.2021, the petitioner duly appeared before the Ld. CMM for the purpose of surrender.

2.2 It is further submitted that thereafter, an application for cancellation of proceedings u/S. 82 Cr. PC was also filed on behalf of the petitioner. The petitioner was apprised that he has already been declared PO by the Ld. CMM on 20.11.2021 and his application was dismissed.

3.0 The petitioner has challenged the aforesaid order dated 22.11.2021 on the ground that the petitioner was granted liberty to surrender within a week by Hon'ble Supreme Court, vide order dated 17.11.2021. The said order was even filed along with the petitioner's application for recalling of proceedings u/S. 82 Cr.PC. But the Ld. CMM dismissed his application without considering this vital aspect.

3.1 It is also argued that on one hand, the petitioner's application for surrender filed on 18.11.2021 was kept pending for consideration on 22.11.2021 and on the other hand, in the meanwhile, the petitioner was declared absconder on 20.11.2021. Thus, the impugned order is perverse and is a gross abuse of process of law and, calls for setting aside.

4.0 *Per contra*, this application is strongly opposed by the State submitting that the present petition is not maintainable as the petitioner has an efficacious alternate remedy by way of revision petition before the Ld. ASJ and placed reliance upon judgment of Punjab & Haryana High Court dated 20.07.2020 in CRM.M. 14089/2020 titled as ***Mehar Singh vs. State of Punjab*** and also on the judgment of Rajasthan High Court dated 17.02.2018 in S.B. Criminal Miscellaneous (Petition) No. 6800/2017 titled as ***Ishwar Lal Kuldeep vs. State of Rajasthan Through PP.***

4.1 It is further submitted that even otherwise, this petition deserves to be dismissed on facts. It is submitted that there are serious allegations against the petitioner in the aforesaid FIR; that after arrest of co-accused Ravi Gupta, efforts were made to arrest the present petitioner and to recover the case property, but he has been evading arrest. Consequently, on 13.09.2021, proceedings u/S. 82 Cr.PC were initiated against him.

4.2 Ld. Prosecutor also submitted that despite dismissal of the petitioner's application for anticipatory bail by Ld. ASJ vide order dated 28.09.2021 and even by this court vide order dated 07.10.2021, the petitioner did not surrender and filed an SLP challenging the order of this court by way of

SLP, which also came to be dismissed on 17.11.2021. Meanwhile, on 27.10.2021, report of the Process-server u/S. 82 Cr.PC was received, whose statement was recorded by the Ld. Trial Court on 18.11.2021 and the petitioner was then declared PO vide impugned order dated 20.11.2021 by the Ld. CMM. It is further submitted that only after recording of statement of the Process-server, the petitioner had filed an application for surrender, which was taken up on 22.11.2021. By that time, the petitioner had already been declared PO. It is also submitted that charge-sheet in the matter u/S. 392/34 IPC has already been filed.

5.0 In rebuttal, Ld. counsel for the petitioner submitted that u/S. 482 Cr.PC this court has ample power to quash the proceedings u/S. 82 Cr.PC and placed reliance on the judgment of High Court of Jharkhand in *Sheikh Anwar @ S.K. Anwar vs. State of Jharkhand, 2014 (4) JLJR.*

6.0 I have duly considered the submissions made on behalf of both the parties.

7.0 At the outset, let me refer to the impugned order, relevant portion of which reads as under :

“20.11.2021

*Present : Sh. Rajiv Kamboj, Ld. APP for the State.
None for the process server.*

Heard. Perused.

*Statement of Process Server SI Thakur Singh has
already been recorded. In view of the statement, **I am satisfied***

that accused Kala Ram @ Kamlesh is absconding or concealing himself so that warrants of arrest could not be executed. Accused Kala Ram @ Kamlesh is hereby declared as Proclaimed Offender.

Accordingly, the present application stands disposed off.

Copy of this order be given dasti to IO.

*(Gajender Singh Nagar)
CMM(Central)/THC/Delhi
20.11.2021”*

7.1 The petitioner’s case is that the impugned order could not have been passed, once he offered to surrender.

8.0 It may be mentioned that Chapter VI of The Code of Criminal Procedure, 1872 provides “Processes To Compel Appearance”. In a case where, a person is evading the process of law by absconding or concealing himself, section 82 Cr.PC provides for issuance of proclamation by the court in the manner provided therein. Section 82 reads as under :

“82. Proclamation for person absconding.

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.”

8.1 From the above it is clear that where a person is hiding/concealing himself in order to frustrate the execution of warrants of arrest, he is said to have absconded; and after issuance of proclamation in the manner prescribed, such person may be declared a proclaimed offender, where such person is accused of offences as specified in sub section (4) of section 82 Cr.PC i.e., sections 302, 304, 367, 367, 382, 392-399, 401, 402, 436, 449, 459 and 460 IPC.

9.0 No doubt, initially, the petitioner instead of joining investigation, moved court for anticipatory bail. After dismissal of the petitioner's SLP by the Hon'ble Supreme Court vide order dated 17.11.2021 directing the petitioner to surrender before the concerned authorities within one week, the petitioner had moved an application for surrender. It is the case of the petitioner that he had moved an application for surrender on 18.11.2021 duly mentioning about the order of Hon'ble Supreme Court dated 17.11.2021; his said application was listed for another date i.e. 22.11.2022, and in the meanwhile vide impugned order dated 20.11.2021, he was declared PO.

9.1 It can not be disputed that once the petitioner had offered to surrender, he could not have been stated to be absconding or hiding. Rather, he had applied for surrendering before the court, after the orders of the Supreme Court. In view of the same, there was no occasion for proceeding with the matter u/S. 82 Cr.PC, while keeping the petitioner's application for surrender pending. The petitioner did surrender on the given date i.e. 22.11.2022 and was taken into custody.

10.0 The State's contention, that the petitioner had an alternate remedy u/S. 397 r/w. S. 401 Cr.PC cannot be faulted. But to reject this petition u/S. 482 Cr.PC on that ground alone may not be called for in the facts of the instant case.

11.0 For the aforesaid reasons, the impugned order is set aside.

12.0 The petition is accordingly allowed.

POONAM A. BAMBA, J

DECEMBER 02, 2022/manju

Click here to check corrigendum, if any