

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122

CRM M-780 of 2023

Date of Decision: 11.12.2023

Gurmail Singh

...Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Shubham Goyal, Advocate, for the petitioner.

Mr. Mohinder Singh Joshi, Addl A.G. Punjab,

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure for quashing of order dated 10.10.2022 (Annexure P-5) passed by the Special Court, Kapurthala, in case FIR No. 61 dated 27.07.2016 under Sections 22 and 25 of the NDPS Act, Police Station Bholath, Kapurthala, whereby, the petitioner has been declared as proclaimed offender, by the trial Court.

2. Learned counsel for the petitioner submitted that on receipt of a secret information, two persons, namely, Pawan Kumar and Gurmail Singh (petitioner) were arrested by the police. Thereafter, aforesaid FIR was ordered to be registered against Pawan Kumar and Gurmail Singh, present petitioner. After conducting the investigation, the challan was presented only against Pawan Kumar.

However, the prosecution moved an application for summoning the petitioner as an additional accused, which was allowed. However, the petitioner was not aware of the proceedings before the trial Court. Later on, without effecting any service of summons/warrants on the petitioner, the police started raiding the house of the present petitioner and he came to know that he had been declared as a proclaimed offender vide order dated 10.10.2022 (Annexure P-5).

3. Learned counsel for the petitioner submitted that vide order dated 07.07.2022, he was ordered to be summoned under Section 319 Cr.P.C. and was required to appear on 10.08.2022. Notice issued to the petitioner was not received back on 10.08.2022 and still he was ordered to be summoned through bailable warrants for 22.08.2022. Again on 22.08.2022, the bailable warrants had not been received back served and he was ordered to be summoned through non bailable warrants for 31.08.2022. On 31.08.2022, non bailable warrants issued against the petitioner were not received back, still, non-bailable warrants were again issued for 06.09.2022. On 06.09.2022, again the non-bailable warrants of arrest issued against the petitioner were not received back, still, the Special Court ordered issuance of proclamation under Section 82 Cr.P.C. against the present petitioner for 14.09.2022. On 14.09.2022, the proclamation under Sections 82/83 Cr.P.C., issued against the petitioner was received back duly served, however, the serving official SI Harish Lal had not

turned up in the Court for making the statement. Consequently, notice was issued to ASI Harish Lal for 28.09.2022, asking him to appear to make a statement regarding proclamation. On 28.09.2022, the statement of serving official ASI Harish Lal was recorded. However, the statutory period of 30 days had not elapsed and the case was adjourned to 10.10.2022 for appearance of the petitioner. Vide the impugned order dated 10.10.2022 (Annexure P-5), the petitioner was ordered to be declared as Proclaimed Offender.

4. Learned counsel for the petitioner submitted that as per the mandatory provisions of Section 82 Cr.P.C., a period of not less than 30 days has to be provided for causing appearance of the accused and the said period has to be counted from the date of publication of the proclamation. In the present case on 06.09.2022, the proclamation under Section 82 Cr.P.C. was issued against the petitioner, requiring him to appear on 14.09.2022. On 14.09.2022, the period of 30 days had not been elapsed. Even on 28.09.2022, when the statement of serving official was being recorded, the period of 30 days had not elapsed admittedly. Thus, the statutory period of 30 days for causing the appearance by the accused was not provided and the proclamation as well as order declaring the petitioner as proclaimed offender are liable to be quashed by this Court.

5. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner.

However, he could not dispute the above referred chronology of events and the orders passed by the trial Court before declaring the petitioner as proclaimed offender.

6. I have heard learned counsel for the parties and perused the record.

7. Section 82(1) Cr.P.C., 1973 mandates that a period of not less than 30 days has to be provided for causing appearance from the date of publication of such proclamation. This Court in **Ashok Kumar v. State of Haryana 2013(4) RCR (Criminal) 550** while interpreting the provisions of Section 82(1) has held that a clear period of 30 days is required to be furnished to the accused and that even in case the Court subsequently adjourned the matter such adjournment beyond 30 days cannot be treated as compliance of provisions of Section 82(1) Cr.P.C., 1973. The relevant extract from the cited judgment reads as follows:-

"4. In view of the above provisions of Section 82(1) Cr.P.C., 1973 it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C., 1973. There was no order in the

publication for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside."

8. In view of the above factual position, a period of only 08 days was afforded for causing appearance after proclamation was effected and in view of the mandatory provisions of Section 82 of the Cr.P.C., the impugned order dated 10.10.2022 passed by the Special Court, Kapurthala, is hereby set aside and the petition stands allowed.

9. Since the petitioner has not appeared before the trial Court, he is directed to appear before the trial Court within a period of 03 months from today.

10. Needless to say the petitioner shall be at liberty to apply for grant of bail in terms of the provisions contained in Chapter XXXIII of the Code of Criminal Procedure.

11.12.2023

amit rana

(N.S.SHEKHAWAT)

JUDGE

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