

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

118

**CRM-M-1079-2023****Date of decision: 10.01.2023**

Lakhwinder Kumar

....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present : Mr. Sandeep Verma, Advocate  
for the petitioner.

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**AMAN CHAUDHARY. J.**

Present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the orders dated 19.09.2022 and 02.11.2022 (Annexures P-1 and P-2 respectively) passed by Judicial Magistrate 1st Class, Patiala issuing proclamation and then declaring the petitioner proclaimed person in FIR No. 86 dated 03.05.2018 registered at Police Station Sadar Patiala, District Patiala under Sections 61/1/14 of the Punjab Excise Act, 1914 (Annexure P-3).

Learned counsel for the petitioner submits that in the FIR lodged against the petitioner on 03.05.2018, he was granted regular bail on 15.05.2018 whereafter he was regularly attending the proceedings, however, due to non communication/miscommunication on the part of the counsel for the petitioner, he could not appear in the said case on 10.08.2021 and he absconded himself from the proceedings for a period of one year consequent to which he was declared proclaimed offender his bail was cancelled and bail bonds/surety bonds were

forfeited to the State on the said date (Annexure P-4). He refers to statement of HC Sukhwinder Singh dated 02.11.2022 (Annexure P-5) to submit that as is required under the provisions of Section 82 Cr.P.C., the proclamation was not read in public. Thus, the aforesaid provision was not complied with. To buttress his submission, he places reliance on the judgments of this Court in **Gurbir Singh Mundi vs. State of Punjab and another** CRM-M-49283-2021, decided on 16.12.2021.

Notice of motion.

Mr. Manipal Singh Atwal, DAG, Punjab who has appeared on receipt of advance copy of the petition, opposes the petition by submitting that the impugned order has been rightly passed by the learned trial Court and there are four more FIRs against the petitioners under the Excise Act.

In the case of **Gurbir Singh Mundi** (supra), it was held that provisions of Section 82(2) Cr.P.C. 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.

Insofar as the non-appearance of the counsel for the accused-petitioner is concerned Hon'ble The Supreme Court of India in the case of '**Rafiq and another vs Munshilal and another** reported as AIR 1981 SC 140, held, "What is the fault of the party who having done everything in his power expected of him, would because of his advocate... The problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanour of his agent... We cannot be a party to an innocent party suffering

injustice merely because of his chosen advocate defaulted.”

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.

Adverting to the facts of the present case inasmuch as due to non communication/miscommunication on the part of the counsel for the petitioner, the petitioner could not appear before the trial Court, which appears to be justified explanation of absence. At times, the accused or his counsel can be prevented by sufficient reasons to put an appearance before the Court on a given date and every such absence cannot necessarily be construed as deliberate and willful. 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 orders dated 19.09.2022 and 02.11.2022 (Annexures P-1 and P-2 respectively) are set aside subject to the petitioner surrendering before the trial Court on or before 24.01.2023 and depositing of Rs.15,000/- with the District Bar Association, Patiala 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.

(AMAN CHAUDHARY)  
JUDGE

January 10, 2023  
Mehak/S.Sharma

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