

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

CRM-M-1710-2023

DATE OF DECISION:-30.01.2023

Kamlesh Rani

...Petitioner.

V.

State of Punjab and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ashish Soi, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab,
for respondent No.1-State.

None for respondent No.2.

HARKESH MANUJA, J. (ORAL)

By way of present petition under Section 482 Cr.P.C., prayer has been made for quashing of order dated 22.12.2022, whereby the petitioner was declared as proclaimed person.

The facts of the case are that the petitioner was summoned under Section 138 of the Negotiable Instruments Act, 1881, vide order dated 01.12.2018 passed by the Court of learned Judicial Magistrate Ist Class, Ludhiana and thereafter, was granted the concession of regular bail vide order dated 19.07.2019 after having been served with notice of accusation.

During trial, on account of non-appearance of petitioner on 15.09.2022 and 28.09.2022, her bail bonds were cancelled, surety bonds forfeited followed by issuance of non-bailable warrants against her.

Thereafter, the proceedings under Section 82 Cr.P.C. were initiated against

the petitioner vide order dated 31.10.2022.

A perusal of the record shows that the proclamation requiring the appearance of the petitioner as directed to be made vide order dated 17.11.2022 was issued on 18.11.2022 for the next date of hearing i.e. 23.11.2022, followed by his declaration as proclaimed person vide impugned order dated 22.12.2022.

Referring to the aforesaid, learned counsel for the petitioner submits that the proclamation requiring the appearance of petitioner as an accused ordered on 17.11.2022, published on 18.11.2022 for 23.11.2022 was in violation of Section 82 (1) Cr.P.C. which enjoins the court to provide 30 days period for appearance under the proclamation.

Despite notice, no one appears on behalf of respondent No.2.

On the other hand, learned counsel appearing on behalf of respondent No.1-State submits that the non-appearance of the petitioner was primarily for the purpose of delaying the proceedings in the complaint, though, he has not been able to justify the non-violation of Section 82(1) Cr.P.C. made by the court below.

I have heard learned counsel for the parties and I find substance in the submissions made on behalf of the petitioner.

Apparently, in the present case, the proclamation requiring the appearance of the petitioner was ordered on 17.11.2022, which was effected on 18.11.2022 for 23.11.2022 i.e. for a period of less than 30 days as required under Section 82(1) Cr.P.C., which to my mind is one of the safeguards provided under the Code and thus, has to be treated as mandatory and inviolable. My aforesaid view can also be derived from a

decision made by this Court in case “Gurpreet Singh vs. State of Punjab”, reported as 2022(3) Cri.CC 136. Relevant para 4 is reproduced hereunder for reference:-

“Keeping in view the factual position, as noticed in order dated 17.01.2022, it is apparent that a clear period of 30 days w.e.f. the date when proclamation was actually affected upon the date nominated for causing appearance i.e. 28.08.2017 was not afforded to the petitioner and it is only a period of 26 days, which was afforded. Thus, bearing in mind the law laid down in Ashok Kumar’s case (supra) and Anita Sharma’s case (supra), the impugned order cannot sustain and is hereby set aside. The petition is accepted accordingly.”

In view of the above, the present petition is allowed, the order dated 22.12.2022 is set aside with the direction to the petitioner to surrender before the trial Court within a period of 10 days from the date of receipt of certified copy of this order and move an application for grant of regular bail, which shall be allowed on the same day, on her furnishing fresh bail bonds/surety bonds to its satisfaction.

30.01.2023

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No