

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

289

CRM-M-4110-2023 (O&M)

Date of decision: 19.07.2023

Yunish Khan

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Devender Kumar, Advocate for the petitioner

Mr. Dhruv Sihag, AAG Haryana

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 CrPC for quashing of the impugned order dated 23.12.2013 (Annexure P-3) passed by learned Chief Judicial Magistrate, Gurgaon vide which the petitioner has been declared proclaimed person in FIR No.176 dated 04.05.2012, registered under Sections 379 and 406 IPC at Police Station DLF Qutab Enclave (Now Police Station DLF Sector 29, Gurugram), District Gurugram.

2. Learned counsel submits that the petitioner was never personally served with the summons/bailable warrants/non-bailable warrants as issued by the trial Court on account of the fact that most of time he remained outside the village to earn his livelihood. Neither bailable nor non-bailable warrants or proclamation were ever effected upon the petitioner and consequently he was not aware about the proceedings. The mandatory provisions of Section 82 Cr.P.C. were not complied with. His absence is neither wilful nor deliberate and on account of the reason aforesaid. Further that he is ready and willing to join the proceedings and it

is prayed that one opportunity may be granted to him to surrender before the learned trial Court. To buttress his submission, reliance is placed 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.

3. Learned State counsel opposes the same by submitting that the impugned order is legal and valid and has been rightly passed by the trial Court on account of non-appearance of the petitioner.

4. No order prejudicial to the rights of the complainant is being proposed to be passed by this Court, thus, there is no requirement for him to be arrayed as party respondent.

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

6. Heard.

7. The very purpose of initiation of proclamation proceedings, is to compel and secure the presence of the accused to face trial and establish the rule of law, as also to ensure finalization of the proceedings.

8. Adverting to the facts of the present case, the reasons for non-appearance of the petitioner that led to the passing of the impugned order, appear to be justified. At times, the accused can be prevented by sufficient reasons to put an appearance before the Court and such an absence cannot necessarily be construed as deliberate and wilful. 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 was not wilful 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 in expediting the trial. This Court in light of the judgment referred to above being applicable to the instant case, finds that the ends of justice would be adequately met if the present petition is allowed.

9. In view of the afore-mentioned judgment and the facts and circumstances of the case, the impugned order dated 23.12.2013, Annexure P-3 is set aside subject to surrender by the petitioner before the trial Court on or before 31.07.2023. On furnishing bail/surety bonds, the trial Court shall release him on bail subject to its satisfaction. He is also directed to furnish an undertaking by way of an affidavit that he will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. He shall not leave the country without prior permission of the Court. The trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

10. 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

July 19, 2023
M.Kamra

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