

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

116

CRM-M-5589-2023 (O&M)
Date of decision: 03.02.2023

SARIF MUHAMED

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Azad Khan, Advocate
for the petitioner.

Mr. Manipal Singh Atwal, DAG Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside of impugned order dated 03.12.2022 passed by learned Judicial Magistrate First Class, Shaheed Bhagat Singh Nagar in FIR No.0009 dated 11.02.2020 under Section 21(1) and 4(1) of Mines and Minerals (Regulation of Development) Act, 1957 registered at police station Mukandpur, District SBS Nagar, whereby the petitioner was declared as proclaimed offender.

Learned counsel contends that the petitioner could not appear in the Court due to miscommunication by the learned counsel for the petitioner in the trial Court. Consequently, warrant of arrest was issued against the petitioner and the petitioner was declared proclaimed offender without following the proceedings under Section 82 CrPC. Learned counsel submits that the petitioner

did not have any information or knowledge about P.O. proceedings. No notice or information was served by local police upon the petitioner. It is his submission that the petitioner is a poor person and driver by profession and due to his bread earning, he used to mostly remain outside from his house. He submits that the petitioner was declared proclaimed offender on the basis of false and fabricated statement presented by local police. 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.

Heard.

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.

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 miscommunication on the part of the counsel for the petitioner before the trial Court that he 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 judgment referred to above, the impugned order dated 03.12.2022 (Annexures P-4) is set aside subject to the petitioner surrendering before the trial Court on or before 10.02.2023 and depositing of Rs.5,000/- with the **Punjab and Haryana High Court Bar Association Lawyer's Family Welfare Fund**, A/c No.41564846387, SBI High Court Branch 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

February 03, 2023

M.Kamra/S.Sharma(syr)

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