

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

Sr. No. 127

CRM-M-5143-2023

Date of decision : 01.02.2023

Daljit Singh

.....Petitioner(s)

Versus

State of Punjab

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Nandan Jindal, Advocate for the petitioner(s)

AMAN CHAUDHARY, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the orders dated 02.12.2022, Annexures P-5, passed by learned Chief Judicial Magistrate, Barnala vide which the petitioner has been declared as proclaimed offender in case FIR No. 39, dated 24.06.2019, registered under Sections 447, 380 IPC at Police Station Mehal Kalan, District Barnala.

Learned counsel contends that FIR was lodged against the petitioner, wherein he was granted anticipatory bail vide order dated 25.07.2019, Annexure P-2. During the pendency of the case, the younger sister of the petitioner, namely, Jagmohan Kaur, who was residing in Canada alongwith her husband and children, had a matrimonial dispute, on account of which, the petitioner had to urgently go to Canada on 14.11.2019 and returned on 03.03.2020. The challan was presented in the Court on 12.10.2020, when the Covid-19 pandemic was at its peak, as such neither the petitioner nor his counsel were permitted to enter the Court premises.

The petitioner had to further visit to Canada on 21.06.2022 and returned on 8.12.2022 and during the interregnum, he was declared a proclaimed offender without complying with the provision of Section 82 Cr.PC, inasmuch as it, having come to the notice of the prosecution as is apparent from report of process server dated 22.08.2022, Annexure P-4, that the petitioner was out of country and, warrant was not executed, thus, without following the proper procedure for effecting service as envisaged under Sections 41, 105 and 82 Cr. P.C. the petitioner was declared as proclaimed offender vide order dated 2.12.2022. Thereafter, the petitioner filed a revision against the said order, which was dismissed as withdrawn. Learned counsel submits that the petitioner expresses his remorse and tenders apology for not seeking permission to go abroad but it was due to the pressing family circumstances as stated above, on account of which, he had to urgently leave for Canada and his intention was not to evade the process of law. He further contends that the petitioner is ready and willing to join the proceedings, for which he prays for grant of only one opportunity, which may even be subject to imposition of costs or any other conditions. 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 and **Jasbir Kaur vs. State of Punjab and another**, CRM-M-25115-2022, decided on 2.6.2022.

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

on account of his non -appearance and he has left the country without prior permission of the Court.

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.

In the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Indian Resident residing in Canada and proclamation proceedings had been initiated while she was not in India, as such, the order of proclamation was set aside.

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 reasons stated above, the petitioner could not appear before the trial Court, and without proper procedure having been followed, the petitioner has been declared a proclaimed offender. Considering the justification for his absence, being not willful and deliberate and his readiness and willingness to surrender and join the proceedings, grant of permission for the same would not prejudice the prosecution or the complainant, rather his joining the proceedings would help in expediting the trial, which is in the interest of the parties thus, in order to secure the ends of justice and on finding judgments referred to above being applicable to the instant case, the present

deserves to be allowed.

In view of the facts and circumstances of this case and the judgments referred to above, the impugned order dated 02.12.2022 is set aside subject to the petitioner surrendering before the trial Court on or before 10.02.2023 and depositing of Rs.10,000/- with the trial Court, which shall be paid to the complainant 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.

1.02.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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