

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

116

CRM-M-8587-2023 (O&M)

Date of decision: 17.02.2023

RAVI KUMAR

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Amit Arora, Advocate
for the petitioner.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 CrPC for quashing of order dated 27.05.2022 passed by learned Additional Chief Judicial Magistrate, Amritsar vide which the petitioner has been declared as proclaimed offender as the same has been passed in utter violation of procedure prescribed under Section 82 CrPC and in a total illegal and arbitrary manner arising out of the case FIR No.0180 dated 13.08.2017, registered under Sections 61/1/14 of Punjab Excise Act at police station Sadar, Amritsar.

Learned counsel contends that the petitioner was falsely implicated in the case. Challan was presented and he had been granted regular bail by the learned trial Court. Thereafter, he continued to regularly appear before the trial Court, however, on 03.12.2019 on account of having noted down wrong date, he was unable to appear before the trial Court and his bail bonds and surety bonds were forfeited to the State and arrest warrants were issued, which he submits that were never served upon the petitioner and he was neither aware of the said order nor the subsequent orders passed by the Court. He further submits that the

petitioner was informed that the case had been adjourned by the Court due to restricted hearing on account of outbreak of Covid-19 and he shall be informed by way of notice about the next date of hearing. On 24.03.2022, proclamation was issued and the petitioner was declared proclaimed person vide order dated 27.05.2022, Annexure P-2. It is the submission of the learned counsel that neither notice, bailable, non-bailable and proclamation was ever effected upon the petitioner as he was not aware of the dates of hearing. He, however, submits that the absence of the petitioner is neither willful nor deliberate and is on account of the reason aforesaid. He submits that the petitioner is ready and willing to join the proceedings, and prays that one opportunity may be granted to the petitioner to surrender before the learned trial Court, which may even be, subject to payment of costs. 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. Kamalpreet Bawa, AAG Punjab, who has appeared on receipt of advance copy of the petition, opposes the petition by submitting that the impugned order is legal and valid and has been rightly passed by the learned trial Court on account of non-appearance of the petitioner.

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.

Since no order that may prejudice the interest of the private respondent is proposed to be passed, therefore, there is no necessity of issuing notice to him to seek his response at this stage.

Heard.

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 that on account of outbreak of Covid pandemic, he could not appear before the trial Court, and subsequently he was not served but declared proclaimed person appears to be justified explanation. At times, the accused 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 orders referred to above, the impugned order dated 27.05.2022 Annexure P-2 is set aside subject to the petitioner surrendering before the trial Court on or before 22.02.2023 and depositing of Rs.10,000/- with the Punjab and Haryana High

Court Bar Association Lawyer's Family Welfare Fund, Account 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 17, 2023

M.Kamra

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