

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

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CRM-M-12536-2023 (O&M)
Date of decision: 21.09.2023

Vinay Kumar @ Sultan and Others

....Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Mohd. Yousaf, Advocate for the petitioner

Mr. Dhruv Sihag, AAG Haryana

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 04.02.2023 passed by SDJM, Dabwali and the subsequent FIR bearing No.78 dated 07.02.2023, registered under Section 174-A IPC, at Police Station City Mandi, Dabwali, District Sirsa.

2. Learned counsel contends that petitioner No.1 was granted anticipatory bail by the Sessions Court vide order dated 16.12.2021, Annexure P-2 and he joined the investigation. Challan was presented on 28.04.2022, in absence of the petitioners and notice was issued for their appearance for 13.06.2022, whereafter, petitioner No.1 appeared before the trial Court and was granted bail vide order dated 29.07.2022, Annexure P-5, however, petitioner Nos.2 and 3 did not appear, against whom notice was issued for 07.09.2022 and on that date, since they could not appear, non-bailable warrants were issued for 03.11.2022. On the said date, none of the petitioners appeared and an application seeking exemption

from personal appearance had been filed on behalf of petitioner No.1, on the ground that death of a relative had taken place, which was dismissed, leading to cancellation of his bail and issuance of non-bailable warrants against him and other petitioners. The said order was made subject matter to challenge before this Court in CRM-M-58924-2022, which was listed on 29.03.2023. During the interregnum, the petitioners had filed an application for grant of anticipatory bail before the trial Court on 31.01.2023, Annexure P-10 in the main case, which was adjourned to 02.02.2023, Annexure P-11, whereby the investigating officer was also summoned for 06.02.2023, on which date the petitioners were granted anticipatory bail in the main FIR No.421 dated 22.11.2021. On the other hand, vide order dated 04.02.2023, Annexure P-13, they were declared proclaimed persons and on 07.02.2023 itself FIR under Section 174-A IPC was lodged i.e., a day after grant of anticipatory bail to them in the main case. Thereafter, vide order dated 10.02.2023, Annexure P-15, the petitioners were granted anticipatory bail in the impugned FIR as well and since then they are regularly appearing in the main complaint as also in the proceedings under Section 174-A IPC.

3. Learned State counsel opposes the prayer made in the present petition as the order impugned was rightly passed, as he did not cause appearance before the trial Court, for which the present FIR was lodged against him. However, he is unable to deny the anticipatory bail granted to the petitioners in the main case as also in the FIR registered under Section 174-A IPC.

4. Heard the learned counsel and perused the file.

5. It is essential for the just decision of the case that few facts be circled back to. The arrest warrants were issued against the petitioners on 03.11.2022,

when they had failed to appear before the Court, for which an exemption application stating the reason for their non-appearance being to attend the last rites of a relative in their family was filed, which came to be dismissed and their bail were cancelled, to which a challenge was made before this Court by petitioners in CRM-M-3697-2023 and CRM-M-58924-2022, wherein notices were issued and is pending adjudication. However, during the interregnum, they were declared proclaimed persons on 04.02.2023 and directions were issued to the police to register an FIR under Section 174A IPC, even though, prior thereto, on 31.01.2023, they had filed for grant of anticipatory bail in the main case, which was initially listed on 02.02.2023 and then adjourned to 06.02.2023 for arguments, after reply was filed by the prosecution. The said application was allowed by granting seven days to them to surrender before the trial Court. Thus, it cannot be said that the petitioners were either absconding or concealing themselves as is the requirement under Section 82 CrPC but were very much before the Court availing of the remedy available to them in accordance with law. As a matter of fact, the prosecution having been put to notice on 31.01.2023 itself in it and on 04.02.2023, the date on which the petitioners were declared proclaimed persons, being in knowledge of the bail petition to be listed after two days i.e. on 06.02.2023, was duty bound to intimate the concerned Court the said fact. Be that as it may, in the FIR registered under Section 174A IPC on 07.02.2023, the petitioners were granted anticipatory bail on 10.02.2023. They are stated to be regularly appearing in the aforesaid proceedings. These can be factored to conclude that the very purpose of initiation of proclamation proceedings, that was to compel and secure their presence to face the trial and establish the rule of law, so as to ensure

finalization of the proceedings, stood nonetheless achieved.

6. Hon’ble The Supreme Court in the landmark judgment of **State of Karnataka vs. L. Muniswamy**, (1977) 2 SCC 699, had in no uncertain terms observed and held as regards the power of the Court under Section 482 CrPC, that the ends of justice are higher than the ends of mere law. Considering the peculiar facts and circumstances of the case in light of the law expounded, the continuation of the proceedings in the impugned FIR, being an abuse of process of Court, deserve to be quashed.

7. Accordingly, the present petition is allowed. The impugned order dated 04.02.2023 passed by Sub Divisional Judicial Magistrate, Dabwali is set aside and the subsequent FIR bearing No.78 dated 07.02.2023, registered under Section 174-A IPC, at Police Station City Mandi, Dabwali, District Sirsa, as also the consequent proceedings arising therefrom are hereby quashed.

(AMAN CHAUDHARY)
JUDGE

September 21, 2023

M.Kamra

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