

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

120

CRM-M-12832-2023 (O&M)

Date of decision: 15.03.2023

JARNAIL SINGH @ JAILA

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Nisha Rana, Advocate
for the petitioner.

AMAN CHAUDHARY. J.

The present petition under Section 482 Cr.P.C. has been filed for setting aside the impugned order dated 07.02.2017 passed by learned SDJM, Garhshanker, whereby the petitioner has been declared as proclaimed offender in case registered bearing FIR No.47 dated 20.03.2015 under Sections 323, 325, 341, 379, 148, 149 IPC at Police Station Garhshanker, District Hoshiarpur.

Learned counsel contends that the petitioner was granted anticipatory bail in the FIR vide order dated 19.06.2015, Annexure P-2. On his statement, a cross-version was also registered against the complainant and other persons. Even civil proceedings are pending inter se parties. After filing of the challan, the petitioner went to Dubai in order to find a job and better prospects of settlement with his family. During the interregnum, the petitioner was declared proclaimed offender vide order dated 07.02.2017, Annexure P-4, without effecting proper service under Sections 82 and 105 CrPC. The co-accused of the petitioner have been convicted vide judgment dated 29.01.2018, Annexure P-5, against which an appeal has been preferred by them. To buttress his submission, he places reliance

on the judgments of Coordinate Benches of this Court in **Gurbir Singh Mundi vs. State of Punjab and another** CRM-M-49283-2021, decided on 16.12.2021, **Hardev Kaur vs. State of Punjab** 2018(2) Law Herald 1256 and **Jasbir Kaur vs. State of Punjab and another**, CRM-M-25115-2022, decided on 2.6.2022. Learned counsel submits that non-appearance of the petitioner before the trial Court in the proceedings is neither willful nor deliberate but for reasons aforesaid. He prays for one opportunity to be granted to him to appear and surrender before the trial Court.

Notice of motion.

Mr. Manipal Singh Atwal, DAG Punjab accepts notice on behalf of the respondent-State and opposes the petition on the ground that the petitioner had left for abroad without seeking any permission from the learned trial Court and the orders declaring him proclaimed person are legal and valid.

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.

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

This Court in **Parminder Kaur Motay Vs. State of Punjab and**

another, CRM-M-49863-2022 decided on 31.10.2022 in somewhat similar circumstances, while setting aside the order, observed as under:-

“Adverting to the facts of the present case, the proclamation proceedings without effecting service upon the petitioner, who was residing abroad, were not justified. However, still it is incumbent upon her to join the proceedings, for the culmination of the same. Considering the fact that the absence of the petitioner being not willful or deliberate and her readiness and willingness to surrender; for which she is stated to be travelling to India; the dispute between the parties also having been compromised; based on which, even the FIR in question, qua other co-accused, i.e. her father and other family members, stands already quashed by this Court and a similar petition filed by the petitioner is pending; the fact that even the first motion statements of the petitioner made through her father, as her attorney holder and of the complainant-respondent No.2 have also been recorded on 10.10.2022, in the divorce petition filed by him; counsel for respondent No.2, who has caused appearance in the present matter, has also affirmed all the facts as stated by the learned counsel for the petitioner, to be correct; has given his no objection to the prayer made in the present petition, thus, no prejudice shall be caused to any of the parties, in case the petitioner is granted one opportunity, to surrender before the trial Court. Therefore, in order to secure the ends of justice and finding judgments referred to above, being applicable to the instant case, the present deserves to be allowed.”

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, the proclamation

proceedings without effecting service upon the petitioner, who was residing abroad, were not justified. However, still it is incumbent upon him to join the proceedings, 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, in case the petitioner is granted one opportunity, to surrender before the trial Court. Therefore, in order to secure the ends of justice and 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 order dated 07.02.2017, Annexure P-4 declaring the petitioner as proclaimed person passed by learned Sub-Divisional Judicial Magistrate, Garshankar is set aside, subject to surrender of the petitioner within three months from today and deposit of Rs.25,000/- with Bal Niketan Society, Sector-15, Chandigarh and in case he files an application for seeking bail, the same shall be decided expeditiously.

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

March 15, 2023

M.Kamra

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