

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

264

CRM-M-14305-2022

Date of Decision:-02.05.2023

Baljit Singh Bargotta through Attorney

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Anoop Verma, Advocate
for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

Ms.Surinder Kaur-respondent No.2 in person

ALOK JAIN, J. (Oral)

1. The present petition has been filed through a duly appointed attorney, *inter alia*, praying for quashing/setting aside the order dated 15.09.2017 (Annexure P-1), whereby the petitioner has been declared as a proclaimed person in FIR No.11 dated 10.01.2015, under Sections 420 and 494 IPC, registered at Police Station Kapurthala City, District Kapurthala.

2. At the outset, learned counsel for the petitioner submits that the petitioner is a Non-Resident Indian, who had left the country on 07.04.2014 i.e. almost 09 months before the lodging of the FIR. He further submits that the essential requirements of Section 82 Cr.P.C. have not been complied with, and the impugned order suffers from material defects.

3. Learned counsel for the petitioner submits that in fact, the matter between the parties was resolved and a compromise was also executed on 02.08.2017, i.e. prior to the passing of impugned order whereby the petitioner was declared proclaimed person.

4. Upon notice, respondent No.2-complainant appeared in person and has very fairly submitted that the matter had been compromised before the impugned order was passed and the factum of the compromise having been duly executed, is endorsed.

5. After hearing the parties, a specific query was put to the learned counsel for the petitioner as to how the petition is maintainable by a Power of Attorney holder of a proclaimed person, to which the petitioner has relied upon the judgment passed by a coordinate Bench of this Court in ***CRM-M-32540-2022, decided on 27.07.2022, titled as "Jaspinder Kaur vs. State of Punjab"***, to submit that an identical matter of the petitioner was allowed and was directed that if the petitioner therein was in India, she was directed to surrender before the learned Magistrate, whereupon the latter would make orders in accordance with law. However, if, still the petitioner was residing in a foreign country, then the learned Magistrate concerned, would take appropriate steps to validly serve her.

6. I have considered the contentions of the parties and this Court is of the opinion that the Courts have to take cognizance of the social fact and reality that a large number of population from our country is gainfully employed in foreign land. The Non-Resident Indians or the Indians who are on work permits or otherwise to earn their livelihood visit the country and have multiple litigations.

7. The Hon'ble Supreme Court of India in the case of ***"Maneka Gandhi vs. Union of India", 1978 (1) SCC 248***, has held that the citizen has a fundamental right flowing from Article 21 of the Constitution of India to travel abroad, coupled with the dicta of the Hon'ble Supreme Court of India laid down in the case of ***"Shri Gurbaksh Singh Sibbia and others vs. State of Punjab", (1980) 2 SCC 565***, and recently considered in ***"Sushila Aggarwal and others vs. State(NCT of Delhi) and another", (2020) 5 SCC 1***, which though emphasized on the scope and ambit of Section 438 Cr.P.C. and the procedure established by law, with a perspective of right to access to justice for an accused. Recently, the Division Bench of Hon'ble Kerala High Court in the case of ***"Anu Mathew vs. State of Kerala", Bail Application No.4421 of 2022, decided on 11.04.2023***, has held on the same lines.

8. Reliance can also be placed upon the various judgments passed by this Court in the case of ***CRM-M-49863-2022***, titled as ***"Parminder Kaur Motay vs. State of Punjab and another"***, decided on 31.10.2022, ***CRM-M-45941-2022***, titled ***"Navanjit Singh vs. State of Punjab"***, decided on 29.10.2022 and ***CRM-M-53486-2022***, titled as ***"Bhajan Singh vs. State of Punjab"***, decided on 18.11.2022, wherein proclamation order was quashed as the petitioner(s) therein were not in India at the time of proclamation proceedings.

9. Accordingly, in the light of the peculiar facts and circumstances of this case and judgments referred to hereinabove, the present petition is disposed of by setting aside the impugned order dated 15.09.2017 (Annexure P-1), with a direction to the petitioner to surrender before the competent Court within three months from today and on his surrender, he shall be

released on bail on furnishing bail/surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned. He is also at liberty to take appropriate steps in accordance with law to get the FIR quashed on the basis of the compromise or in the event, the respondent authorities desire to file a cancellation report, the matter may be proceeded accordingly.

9. The petition stands disposed of in the above terms.

02.05.2023
neenu

(ALOK JAIN)
JUDGE

Whether speaking/reasoned:-	Yes
Whether Reportable:-	Yes