

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-15110-2021
Date of decision: 25.01.2023

BABY

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ranbir Singh, Advocate
for the petitioner.

Ms. Aditi Girdhar, AAG Haryana.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 15.12.2018 (Annexure P-1) whereby the petitioner has been declared as proclaimed offender/person in DD No. 14 dated 13.07.2017 under Section 182 IPC, registered at Police Station Women, Karnal, District Karnal.

Learned counsel for the petitioner submits that the petitioner submitted a complaint before the CM window against the accused Rajesh Gujjar, Pawan and Happy and their three associates regarding outraging the modesty of her daughter. When no action was taken against the abovesaid accused, the petitioner submitted a complaint before the SP, Karnal (Annexure P-4) and the said complaint was forwarded to SHO, Gharaunda for taking action against the accused persons but no action was taken against them. Thereafter, in the year 2017, the accused threatened the petitioner to kidnap her daughter and later in 2019, they kidnapped her minor daughter and in this regard, case bearing FIR No. 72 dated 28.01.2019 was

registered which is pending trial before learned ASJ Karnal and on 10.03.2021, the same was fixed for prosecution evidence and during her cross-examination on a question posed by the defence counsel (Annexure P-7), she came to know that the proceedings under Section 182 Cr.P.C. were initiated against her wherein she was declared proclaimed offender/person vide order dated 15.12.2018 (Annexure P-1) whereafter, she surrendered and was granted regular bail vide order dated 24.03.2021 (Annexure P-2). It is further submitted that the petitioner was unaware of the PO proceedings having been initiated against her declaring her as proclaimed offender/person as no service was effected upon her in terms of Section 82 Cr.P.C. Thus, the absence of the petitioner in the proceedings was neither willful nor deliberate. 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. He submits that the petitioner shall furnish an undertaking before the trial Court that she shall continue to appear before the trial Court on each and every date of hearing. The said affidavit be filed on or before the next date of hearing.

On the other hand, learned State counsel submits that the impugned order has rightly been passed on account of non appearance of the petitioner.

Heard.

In the case of **Gurbir Singh Mundi** (supra), it was held that provisions of Section 82(2) Cr.P.C. are to be mandatorily complied with cumulatively and not alternatively. The Court had quashed the order declaring the petitioners therein as proclaimed persons on the ground that declaration was not read publicly in some conspicuous place of town or village, in which the accused ordinarily resides.

Adverting to the facts of the present case inasmuch the petitioner was never served and came to know of the PO proceedings only during her cross-examination in the FIR lodged by her regarding kidnapping of her daughter, thus could not appear before the trial Court, which appears to be justified explanation of absence. At times, the accused can be prevented by sufficient reasons such as no effecting of service as in the present case, to put an appearance before the Court, as such absence cannot necessarily be construed as deliberate and willful. However, it is incumbent upon them to join the proceedings, before the trial Court, for the culmination of the same. Thus, in order to secure the ends of justice keeping in view the facts and circumstances of this case that the petitioner had joined the proceedings in compliance of the order passed by this Court and the judgments referred to hereinabove being applicable to the instant case, the present petition deserves to be allowed.

Accordingly, the impugned order dated 15.12.2018 (Annexure P-1) whereby the petitioner has been declared as proclaimed offender/person in DD No. 14 dated 13.07.2017 under Section 182 IPC, registered at Police Station Women, Karnal, District Karnal is set aside.

(AMAN CHAUDHARY)
JUDGE

January 25, 2023

Mehak

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>