

CRM-M-30976-2017

: 1 :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-M-30976-2017

Date of Decision : May 10, 2023

Jaspinder Singh Malhi

.... Petitioner

vs.

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Ranjit Singh Ghuman, Advocate
for the petitioner.

Mr. Jaiteshwar S. Bhandari, AAG, Punjab.

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GURBIR SINGH, J. :

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing the order dated 08.11.2016, passed by the learned Judge, Special Court, Ludhiana (Annexure P-4), whereby the petitioner had been declared a Proclaimed Offender.

Learned counsel for the petitioner submits that the petitioner, who was a resident of State of Punjab, is presently residing at Surrey, Canada. The petitioner was falsely implicated in the case FIR No.18 dated 20.01.2010, registered under Sections 302, 307, 506, 148, 149 IPC, 1860 and Sections 25, 27 of the Arms Act, 1959, at Police Station, Jagraon, District Ludhiana (Rural) (Annexure P-1).

The petitioner moved an application to the Senior

CRM-M-30976-2017

: 2 :

Superintendent of Police, Ludhiana (Rural) requesting for an independent inquiry regarding the aforesaid FIR. Upon inquiry, the petitioner was found innocent. After presentation of the said investigation report, the petitioner went to Canada on 09.10.2010 and has never been to India thereafter till the proclamation was given effect.

After completion of investigation, challan under Section 173 Cr.P.C. was presented on 13.04.2010 (Annexure P-2). Though some other persons were named in the said Challan, but the petitioner was not challaned. When the same was presented, name of the petitioner along with one other person namely Satinder Pal Singh @ Nikku was kept in Column No.2. However, during pendency of the trial, an application under Section 319 Cr.P.C. was filed by the prosecution and vide order dated 28.03.2016 (Annexure P-3), the present petitioner and Satinder Pal Singh @ Nikku were summoned to face trial along with other accused. No summons were issued to the petitioner at his address in Canada. The petitioner has never been to India after 09.10.2010. The said fact can be verified from a copy of his Passport from 12.12.2008 to 11.12.2018, annexed as Annexure P-5 with the petition. The petitioner has acquired Canadian Nationality and has been issued Canadian Passport from the date of its issue i.e. 30.10.2015 and the same is valid up to 30.10.2025 (Annexure P-6). It has further been submitted that neither any attempt was made to serve the petitioner nor the petitioner received any summons. The order declaring the petitioner a Proclaimed Offender was passed in gross violation of Section 82 Cr.P.C.

CRM-M-30976-2017

: 3 :

Learned counsel for the petitioner has also apprised this Court that the co-accused, who were facing trial in this case, have already been acquitted on 01.12.2017 by learned Additional Sessions Judge, Ludhiana.

In support of his contentions, learned counsel for the petitioner has relied upon Gurpreet Singh vs. State of Punjab and another – CRM-M-6748-2014, decided on 02.09.2014 (Annexure P-7), Joga Singh vs. State of Haryana – CRM-M-32190-2014, decided on 17.07.2015 (Annexure P-8) and Jagjit Singh Lahiri vs. State of Punjab and others – CRM-M-13856-2016 (O&M), decided on 22.09.2016 (Annexure P-9).

Learned State counsel has opposed the petition by submitting that the petitioner was declared Proclaimed Offender after adopting proper procedure. The petitioner left the country knowing fully well that a case was registered against him. He should, therefore, appear before the Trial Court and face the trial.

Heard.

This Court is satisfied that the order dated 08.11.2016, passed by the learned Judge, Special Court, Ludhiana (Annexure P-4), whereby the petitioner had been declared a Proclaimed Offender, was passed in violation of statutory provisions of Section 82 Cr.P.C.

From the copy of the Passport (Annexure P-5), it is clear that the petitioner was having valid Visa for Canada w.e.f. 28.09.2010 and he reached Canada on 09.10.2010. It is not the case of respondent-State that the petitioner had ever been to India thereafter. As per order dated 08.11.2016 passed by learned Judge, Special Court, Ludhiana (Annexure P-

CRM-M-30976-2017

: 4 :

4), statutory period qua petitioner Jaspinder Singh stood elapsed and therefore, he was declared Proclaimed Offender. From the record, it cannot be said that summons were ever sent to the petitioner or were ever received by the petitioner at his Canada address.

It is an admitted fact that before the issuance of the summoning order, the petitioner had left India.

In Sunil Kumar vs. State – 2002 (1) RCR (CrL.) 119, the Delhi High Court has held that when the accused is residing in foreign country and no attempt is made to serve summons through Ministry of External Affairs, the order of proclamation is liable to be set aside. In the said judgment, it was held that in addition to the ordinary mode of service; notice can also be ordered to be published in a newspaper where the person is ordinarily residing.

In the present case also, it has neither been shown that the notice issued to the petitioner under Section 82 Cr.P.C. had been served upon him nor it has been shown that the proclamation had been issued in accordance with law.

In view of the above circumstances, the present petition is allowed. The order dated 08.11.2016, passed by the learned Judge, Special Court, Ludhiana (Annexure P-4), whereby the petitioner had been declared a Proclaimed Offender, is hereby quashed, being in violation of Section 82 Cr.P.C. The petitioner shall deposit cost of Rs.10,000/- with the concerned Legal Services Authority.

CRM-M-30976-2017

: 5 :

The petitioner is directed to surrender before the Illaqa Magistrate/Duty Magistrate without delay but not later than three months from today. In case, the petitioner surrenders before the Illaqa Magistrate/Duty Magistrate within three months and move an application for bail in the Trial Court, the same shall be decided by the said Court within a week. The petitioner shall not be arrested till he surrenders in the Court or for a period of three months from today, whichever is earlier.

The petition stands disposed of in the above terms.

May 10, 2023
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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.