

CRM-M-18657-2023

2023:PHHC:052534

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-18657-2023

Date of Decision: 17.4.2023

Ashok Kumar

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Krishan Kanha, Advocate for
Mr. Narinder Lucky, Advocate, for the petitioner.

KARAMJIT SINGH, J. (Oral)

Present petition has been filed by the petitioner seeking quashing of order dated 31.1.2023 (Annexure P-5) passed by the Court of Judicial Magistrate, 1st Class, Jalandhar whereby the petitioner has been declared as proclaimed person in criminal case having FIR No.51 dated 4.3.2017 registered under Sections 61, 1 and 14 of Punjab Excise Act at Police Station Sadar Jalandhar, District Jalandhar and further, challenge has been laid to earlier dated 18.5.2022 (Annexure P-3) passed by the said Court.

Counsel for the petitioner *inter alia* contends that order dated 31.1.2023 (Annexure P-5) has not been passed by the learned trial Court in conformity with the provisions of Section 82 of Cr.P.C. as clear 30 days period was not provided to the petitioner to appear before the Court concerned with effect from the date of publication of the proclamation. In this context, counsel for the petitioner referred to various orders passed by the learned trial Court before passing of impugned order (Annexure P-5) and the copies of the same are already available on record.

Notice of motion.

Mr. C.L.Pawar, Addl. AG, Punjab accepts notice on behalf of the State and submits that the petitioner jumped bail and thereafter, declared as proclaimed person in accordance with provisions of Section 82 of Cr.P.C.

From the perusal of the documents available on record, in the instant case, after the petitioner jumped the bail, learned trial Court issued proclamation of the petitioner under Section 82 of Cr.P.C. for 16.1.2023 vide order dated 12.12.2022. From the perusal of order dated 16.1.2023, it appears that the said proclamation of the petitioner was executed on 26.12.2022, thus, making it clear that 30 days time as per provisions of Section 82 of Cr.P.C. was not given to the petitioner for his appearance with effect from the date on which proclamation of the petitioner was published. So, it is apparent that impugned order (Annexure P-5) is not passed by the learned trial Court in consonance with the provisions of Section 82 of Cr.P.C. In this context, reference is made to law laid down by this Court in **Ashok Kumar v. State of Haryana; 2013 (4) RCR (Criminal) 550.**

Consequently, the present petition is hereby allowed and impugned order (Annexure P-5) is set aside and in case, the petitioner surrenders before the learned trial Court within next 10 days, in that eventuality, the petitioner is directed to be released on regular bail by the Court concerned to its own satisfaction. However, the learned trial Court is at liberty to proceed against the petitioner and his surety under Section 446 of Cr.P.C.

(KARAMJIT SINGH)
JUDGE

April 17, 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No