

CRM-M-23531-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(261)

CRM-M-23531-2022

DATE OF DECISION:- 03.08.2023

AVINAV SINGH

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Ms. Vinni Mahajan, Advocate for
Mr. Nipun Vashist, Advocate for the petitioner.

Mr. Ramender Singh Chauhan, AAG, Haryana
for the State-respondent.

SUVIR SEHGAL, J. (Oral)

1. Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing impugned order dated 10.05.2019, Annexure P-8, passed by learned ACJM, Jhajjar, whereby petitioner has been declared as a proclaimed person.
2. Facts leading to the filing of the petition are that FIR No.336 dated 09.07.2018 for offences under Sections 420, 467, 468, 471, 379, 411, 120-B, 201, IPC was registered at Police Station Beri, District Jhajjar, Annexure P-1, on a complaint moved by Naresh. Petitioner and his accomplices are accused of theft of a vehicle and getting it registered on fake documents. On completion of investigation, final report was submitted qua the arrested accused before the competent Court on 20.02.2019, however, the petitioner could not be apprehended despite attempts and warrants of arrest were issued by the Area Magistrate, Jhajjar. As the petitioner continued to evade arrest, proclamation was issued and by impugned order, Annexure P-8, he was declared as a proclaimed offender.

3. Counsel for the petitioner contends that the petitioner, who has clean antecedents, has been falsely framed and was never aware of the pendency of the criminal proceedings nor did he receive any summons at his residential address. He asserts that pursuant to impugned order, FIR under Section 174-A, IPC has not been lodged. He submits that the petitioner is prepared to appear and join the proceedings within any reasonable period subject to payment of cost, as directed by this Court.

4. *Per contra*, State counsel has opposed the petition and has supported the impugned order. He has filed reply by way of an affidavit of Deputy Superintendent of Police, Beri, District Jhajjar, which is taken on record and urges that as the petitioner has been evading the process, he has rightly been declared as a proclaimed person after following the procedure prescribed by law.

5. I have heard counsel for the parties and considered their respective submissions.

6. While issuing notice of motion, this Court on 26.05.2022 observed as under:-

“The petitioner assails order dated 10.5.2019 (Annexure P-8) passed by learned Additional Chief Judicial Magistrate, Jhajjar vide which the petitioner has been declared a proclaimed offender.

Learned counsel for the petitioner submitted that mandatory provisions of Section 82 Cr.P.C. have not been complied with inasmuch as the requisite period of 30 days w.e.f. the date when proclamation is actually effected till the date nominated for causing appearance as per proclamation notice, was not afforded. Learned counsel, in this regard,

has drawn the attention of this Court to order dated 14.2.2019 (Annexure P-4) i.e. the date when an order was passed for issuance of proclamation for causing appearance of the petitioner for 10.4.2019.

Learned counsel for the petitioner submitted that as per the statement (Annexure P-6) of the serving official recorded in the Court on 10.4.2019, it was on 13.3.2019 that the proclamation was actually effected. In other words, a period of less than 30 days was afforded to the petitioner to cause appearance.

Learned counsel has next drawn the attention of this Court to order dated 10.4.2019 (Annexure P-7), wherein the Trial Court, in order to cover up the aforesaid error, further adjourned the matter to 10.5.2019 on which date the impugned order dated 10.5.2019 (Annexure P-8) was passed. Learned counsel has submitted that by way of adjourning the matter further vide order dated 10.4.2019, the defect of not having afforded 30 days of notice upto the date nominated for causing appearance i.e. upto 10.4.2019 could not have been cured. Learned counsel, in this context, places reliance upon Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550 and a recent judgment dated 16.7.2021 of this Court rendered in CRM-M-25088 of 2021 titled Anita Sharma Vs. State of Punjab.

Notice of motion for 18.8.2022.

In the meantime, the operation of impugned order shall be kept in abeyance.”

7. In *Ashok Kumar’s* case (supra), while dealing with a similar situation, this Court has held that Section 82, Cr.P.C mandates a clear period of 30 days from the date of publication of the proclamation and in its absence, the provision cannot be said to have been complied with. The purpose of this provision is to secure the presence of the accused. Once an accused appears and joins the proceedings, he cannot be treated as an absconder.

8. Noticing the submission made by the counsel for the petitioner, nature of allegations levelled against him and his unblemished past, this Court is of the considered view that his *bonafides* deserve to be tested and he should be given an opportunity to appear before the investigating agency and join the proceedings, subject to payment of cost.

9. *Ergo*, impugned order dated 10.05.2019, Annexure P-8, passed by the Additional CJM, Jhajjar is set aside. In case, petitioner appears before the Investigating Officer within a period of four weeks from today and joins the investigation, he shall be released on bail on his furnishing bail/surety bonds to its satisfaction, subject to deposit of cost of Rs.20,000/- with the Poor Patient Welfare Fund, PGIMER, Sector 12, Chandigarh, which shall be a condition precedent to his release on bail. It is made clear that in case the petitioner fails to comply with any of the conditions, instant petition shall be treated to have been dismissed.

10. With the above direction, petition is disposed of.

(SUVIR SEHGAL)
JUDGE

03.08.2023
Kamal

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No