

IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH

120

CRM-M-23043-2023 (O&M)

Date of Decision: 18.08.2023

GAGANDEEP SINGH

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. JS Dadwal, Advocate
for the petitioner.

HARNARESH SINGH GILL, J.(Oral)

Prayer in this petition is for quashing the order dated 19.01.2023 (Annexure P-4) passed by the learned Judicial Magistrate, 1st Class, Ludhiana, vide which the petitioner has been declared as a proclaimed person, in FIR No.375 dated 25.12.2018, registered under Section 61 of the Excise Act, at Police Station Shimlapuri, District police Commissionerate Ludhiana.

Learned counsel for the petitioner submits that the petitioner was granted anticipatory bail by the learned Additional Sessions Court, Ludhiana, on 31.01.2019, which was made absolute on 11.02.2019 and thereafter, he was regularly appearing before the trial Court and that on 13.07.2022, the petitioner could not appear before the Court as he was informed by the counsel representing him before the Court below that the matter will be resolved if the fine amount will be deposited; that the fine amount was deposited by the petitioner and that on 13.07.2022 itself,

without cancelling and forfeiting bail/surety bonds of the petitioner, non-bailable warrants were issued against him. It is, thus, contended that non-appearance of the petitioner was neither intentional nor willful, but for the reasons explained above. He further submits that the provisions of Section 82 Cr.PC. have not been complied with, while declaring the petitioner as proclaimed person, inasmuch as, notices were not read in the open/public place.

In support of his contentions, learned counsel for petitioner relies upon the orders dated 16.12.2021 passed by a Coordinate Bench of this Court in CRM-M-49283-2021 titled as 'Gurbir Singh Mundi vs State of Punjab and another' and dated 14.03.2023 passed by another Coordinate Bench of this Court in CRM-M-2907-2020 titled as 'Mukesh Kumar Arora and others vs State of Haryana and another'.

Notice of motion.

On the asking of this Court, Mr. Hakam Singh, AAG Punjab, accepts notice on behalf of the respondent-State. He submits that the petitioner had intentionally not appeared before the Court below on 13.07.2022 and thus, non-bailable warrants against him were rightly issued. He further submits that after granting ample opportunities to the petitioner to appear before the Court below, he was declared as a proclaimed person on 19.01.2023.

I have heard the learned counsel for the parties.

It is a case, wherein, the petitioner had been regularly appearing before the Court, but he could not appear on a solitary date i.e. 13.07.2022.

The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and judgments as are passed qua the accused. If the accused shows his sincere intention and desire to appear before the Court, then it would not be unjustified to protect him from being arrested.

Though, the petitioner absented himself from the Court proceedings, yet he is now not required for any investigation or interrogation purposes and rather, he is only to face the trial. Therefore, no useful purpose would be served by sending the petitioner to custody.

Keeping in view the above fact, but without expressing any opinion on the merits of the case, the present petition is allowed and the order dated 19.01.2023 (Annexure P-4) passed by the learned Judicial Magistrate, 1st Class, Ludhiana, is hereby set aside. The petitioner is directed to surrender before the learned trial Court/Duty Magistrate, within 15 days from today, subject to him depositing the costs of Rs.10,000/- with the concerned District Legal Services Authority. On his doing so, the petitioner shall be released on bail, subject to him furnishing the fresh bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

18.08.2023

Aman Jain

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*