

2023:PHHC:077239

117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26447-2023

Date of decision: 26.05.2023

VIVEK GAUR

...Petitioner

V/s

STATE OF HARYANA AND ANOTHER

...Respondents

CORUM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

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

DEEPAK MANCHANDA J.

The petitioner has preferred this petition under Section 482 of the Code of Criminal Procedure seeking quashing of impugned order dated 24.03.2023 (Annexure P-1) passed by Judicial Magistrate Ist Class, Gurugram in case bearing No. NACT-33471-2018 dated 10.10.2018, vide which the petitioner has been declared as proclaimed offender.

Learned counsel for the petitioner contends that on receipt of the notice in the present case, the petitioner was duly represented by his counsel on 15.11.2019, the petitioner has always been represented by his counsel, who is legal representative and thus cannot by any measure be declared as a proclaimed offender. Learned counsel further contends that when the case was taken up on 15.02.2020, trial Court without taking into account the genuine and legitimate reasons of the exemption from physical appearance of the petitioner, right away issued non-bailable warrants in a mechanical manner. Learned counsel submits that non-bailable warrants issued against the petitioner were received back with the report that "*Accused has left the given address*" and despite the said report, the trial Court proceeded to summon the petitioner

through proclamation under Section 82 of Cr.P.C. and the report received back clearly indicates that the NBWs were never served/executed as the petitioner had left the given address. Learned counsel further submits that petitioner is ready and willing to join the trial proceedings.

Notice of motion.

At this stage, Mr. Bhupender Singh, DAG Haryana, who is present in the Court accepts notice on the asking of the Court and submits that the impugned order dated 24.03.2023 has been passed on the sole ground of absence of the petitioner.

A perusal of the order dated 24.03.2023 (Annexure P-1) reflects that the trial Court proceeded to declare the petitioner as proclaimed person for the solitary reason of absence of the petitioner.

The objective of Section 82 of the Code is to secure the presence of the accused. Once the accused is willing to appear and join trial proceedings, the objective has been achieved.

Consequently, the instant petition stands allowed and impugned order dated 24.03.2023 (Annexure P-1) is set aside. However, arrest of the petitioner is stayed for a period of two weeks only enabling him to put in appearance before the trial Court to face trial. Petitioner is directed to surrender before the trial Court on or before 09.06.2023 and on his doing so, he shall be admitted to bail subject to his furnishing personal bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate.

It is made clear that if the petitioner does not present himself before the trial Court within the stipulated time, interim protection granted to her will be deemed to have been automatically vacated.

26.05.2023
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes
Yes/No

(DEEPAK MANCHANDA)
JUDGE