

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-28603-2023

Date of decision: 01.06.2023

SANGEETA CHOPRA

...PETITIONER(S)

VERSUS

STATE OF PUNJAB

...RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Bhrgu Dutt Sharma, Advocate
for the petitioner.

GURBIR SINGH, J. (ORAL)

Learned counsel for the petitioner *inter alia* submits that FIR No.61 dated 19.05.2015 (Annexure P-1) under Section 406, 420 and 120-B of IPC read with Section 24 of Emigration Act, 1983 was registered against the petitioner and her husband. The petitioner had filed a petition before this Court seeking anticipatory bail. She was granted interim bail and the same was made absolute vide order dated 05.10.2015 (Annexure P-3). The challan was presented only against her husband. During the pendency of challan, her husband died and proceedings were abated qua him but no challan was presented against her. As per order dated 26.11.2021 (Annexure P-4), supplementary challan was presented against the petitioner. Summons were issued against her, however the same were received back unserved with a report that house of the petitioner was locked. No attempt was made to give notice to the petitioner. Vide order dated 30.04.2022 (Annexure P-14) passed by Additional Chief Judicial Magistrate, notice issued to the petitioner received back unserved and therefore fresh notice was issued to her through Commissioner of Police for ensuring the service for 13.05.2023. In pursuance

of the order dated 30.04.2022 the notice issued dated 04.05.2022 was issued to serve the petitioner but it was reported by process serving agency, the house of the petitioner was found locked and therefore a photocopy of summons was pasted on the gate of the house of the petitioner. On 13.05.2022, non-bailable warrant of arrest was issued for 09.06.2023 against the petitioner. Despite this that petitioner could not be served by the process serving agency due to paucity of time. On 05.07.2022, proclamation process under Section 82 of Cr.P.C. was issued for 09.08.2022. The report dated 16.07.2022 about effecting proclamation is reproduced below for reference:-

“It is requested that proclamation issued by the Hon’ble Court was received for effecting service. Munadi was duly got effected in the Mohalla while taking along Chowkidar of the Mohalla of Sangeeta Chopra accused named in the proclamation. One copy of the proclamation was pasted at the given address of the accused. Second copy of the proclamation was pasted on a conspicuous place. Third copy of the proclamation was pasted on the notice board of your Hon’ble Court. Original copy of the proclamation is being presented for further proceedings.”

On 09.08.2022, an order was passed by learned trial Court which is reproduced below for reference:-

“Proclamation issued qua accused Sangeeta Chopra received back duly executed. Statement of serving constable is also recorded. Since the period of 30 days has not been elapsed. Now to come up on 16.08.2022 for awaiting appearance of accused Sangeeta Chopra.”

Since there was specific direction in the proclamation order to appear in the Court on 09.08.2022. On that day, in violation of provisions Section 82 Cr.P.C., learned trial Court adjourned the case for 16.08.2022 observing that period of 30 days has not been elapsed.

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It is held by various judgments passed by this Court that there should be clear notice of 30 days to the accused for appearance in the Court at the time of effecting proclamation. The petitioner had no knowledge as regards filing of supplementary challan against her and proclamation was not conducted as per rules.

Notice of motion.

At the asking of the Court, Mr. Himani Arora, AAG, Punjab, appears and accepts notice on behalf of respondent No.1-State. A copy of the paper book be supplied to her during the course of the day.

The order dated 16.08.2022 is passed against provision of Section 82 Cr.P.C. so the same is hereby set aside.

The petitioner is directed to surrender within ten days before the learned trial Court. Since she was on anticipatory bail so she shall be released on bail on moving the application for bail on furnishing bail bonds/surety bonds to the satisfaction of the concerned Trial Court/Duty Magistrate.

Therefore, present petition disposed of.

(GURBIR SINGH)
JUDGE

01.06.2023
Kusum

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No