

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(126)

CRM-M-29444-2023 (O&M)

Date of decision:- 14.09.2023

Sonu @ Ajay

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Bharat Puri, Advocate for the petitioner.

SUVIR SEHGAL, J. (Oral)**CRM-38379-2023**

1. Application is allowed as prayed for.
2. Interim orders passed by the Trial Court are taken on record Annexures P-11 (Colly).

Main case

1. By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner has approached this Court for quashing of orders dated 19.12.2022 and 20.05.2023, Annexures P-5 and P-6, respectively, whereby bail granted to the petitioner has been cancelled, bail/surety bonds has been forfeited and he has been declared as a proclaimed person.
2. Counsel for the petitioner submits that petitioner has been named as an accused in FIR No.217 dated 29.10.2017, lodged for offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Bhogpur, District Jalandhar Rural, Annexure P-2. Counsel submits that by order dated 02.12.2017, Annexure P-3, petitioner was released on interim bail by the learned Special Court, Jalandhar as the FSL

report was awaited. By inviting the attention of the Court to interim orders passed by the Trial Court, counsel submits that petitioner has been regularly appearing before the Trial Court. He submits that the FSL report was presented and on account of his inadvertent absence from the Court on 19.12.2022, Annexure P-5, bail order was cancelled, bail and surety bonds were forfeited to the State. Counsel submits that by the same order, non-bailable warrant was issued. Counsel urges that despite the fact that the non-bailable warrant was not executed, the Court straightaway proceeded to issue proclamation under Section 82 Cr.P.C.. It is his argument that the proclamation was effected on 15.04.2023 and when the proceedings were taken up on 27.04.2023, the Trial Court adjourned the matter to 20.05.2023 to await the completion of the statutory period of 30 days. He contends that as mandatory procedure prescribed under Section 82, Cr.P.C. have not been complied with, impugned order dated 20.05.2023, Annexure P-6, whereby the petitioner has been declared as a proclaimed person, cannot be sustained. He asserts that the petitioner never misused the concession of bail. He is prepared to surrender before the Trial Court and join the proceedings within any reasonable time granted by this Court, subject to any condition imposed upon him.

3. Notice of motion.

4. On asking of the Court, Mr. A.P.S.Tung, DAG, Punjab accepts notice on behalf of the State-respondent. On the basis of material on the record, State counsel is not in a position to dispute the factual position. State counsel submits that recovery of 25 grams of Alprazolam powder from a polythene bag was effected from the personal possession of the petitioner.

5. Counsel for the parties have been heard.

6. After an exhaustive discussion of the case law, a Co-ordinate Bench of this Court in *Anita Sharma vs State of Punjab* (CRM-M-25088-2021, decided on 16.07.2021) held that the Judicial Magistrate could not extend the time by simply adjourning the case for awaiting appearance of the accused and was mandatorily required to issue fresh proclamation for publication in accordance with the provisions of Section 82(2), Cr.P.C. It is evident from the material on record of the case in hand that the procedure as obligated by Section 82, Cr.P.C. has not been adhered to. Impugned order dated 20.05.2023, Annexure P-6, therefore, cannot withstand the scrutiny of law.

7. In view of the above position, impugned order, Annexure P-6, cannot be sustained and is hereby set aside, subject to condition that the petitioner surrenders before the Trial Court within a period of four weeks from today and joins the proceedings. In case, he does so and moves an appropriate application, Trial Court shall release the petitioner on bail on furnishing fresh bail/surety bonds to its satisfaction. This will also be subject to deposit of cost of Rs.10,000/- with the Poor Patient Welfare Fund, PGIMER, Sector-12, Chandigarh, which shall be a condition precedent to his release on bail. The receipt of deposit shall be furnished by the petitioner to the Trial Court on the day he surrenders. In case the petitioner fails to comply with any of the conditions, this petition shall stand dismissed.

8. Disposed of.

14.09.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No