

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

151

CRM-M-29207-2023 (O&M)

Date of decision: 15.06.2023

Yashpal Singh @ Jaspal Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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

Mr. Kamalpreet Bawa, AAG Punjab

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 CrPC for quashing the impugned order dated 15.01.2019 passed by learned Judicial Magistrate First Class, Garhshankar, Annexure P-2, in FIR No.42 dated 17.04.2017 registered under Sections 406, 420 IPC and Section 24 of the Immigration Act, at Police Station Mahalpur, District Hoshiarpur, whereby the petitioner was declared proclaimed offender.

2. Learned counsel contends that the FIR was lodged when the petitioner was not in the country and was residing in Cambodia regarding which reliance is placed on Annexure P-4 dated 10.01.2017, which was an amount that he had received through Western Union in Cambodia. He returned to India on 28.10.2019, and to substantiate this fact he draws the attention of the Court to the copy of the passport, Annexure P-3. He submits that thereafter a compromise dated 06.06.2022 has been arrived at between the parties, based on which the petitioner had filed a petition bearing CRM-M-49550-2022, which was however dismissed as withdrawn in view of the fact that the he had been declared a

proclaimed offender. He submits that the petitioner has been declared proclaimed offender without complying with the procedure as envisaged under Sections 82 and 105 Cr.P.C. The non-appearance of petitioner before the trial Court in the proceedings is neither wilful nor deliberate but for aforesaid reasons. He is ready and willing to surrender before the trial Court for which he prays for grant of one opportunity, which may even be, subject to payment of costs. Reliance is placed on the decisions in **Gurbir Singh Mundi vs. State of Punjab and another** CRM-M-49283-2021, decided on 16.12.2021 and CRM-M-38014 of 2022 titled as **Narinder Kaur Vs. State of Punjab and others** decided on 11.10.2022

3. Learned State counsel opposes the petition by submitting that the impugned order is legal and valid and has been rightly passed by the learned trial Court on account of non-appearance of the petitioner.

4. Heard.

5. In the case of **Gurbir Singh Mundi** (supra), it was held that provisions of Section 82(2) Cr.P.C. are to be mandatorily complied with cumulatively and not alternatively. The Court had quashed the order declaring the petitioner therein as proclaimed person on the ground that declaration was not read publicly in some conspicuous place of town or village, in which the accused ordinarily resides.

6. In **Narinder Kaur** (supra), wherein the dispute had been compromised between the parties, this Court ordered the petitioner, who was declared a proclaimed person while she was living abroad, to surrender before the trial Court, upon which she was to be released on bail.

7. The very purpose of issuance of non-bailable warrants, is to compel and secure the presence of the accused to face trial and establish the rule of law so

as to ensure finalization of the proceedings.

8. Adverting to the facts of the present case, the FIR was registered against the petitioner when he was abroad and the proclamation proceedings were initiated without effecting service upon him, were not justified. However, it is still incumbent upon him to join the proceeding, for the culmination of the same. Considering the fact that the absence of the petitioner being not wilful or deliberate and his readiness and willingness to surrender, in case he is granted one opportunity, to surrender before the trial Court. Therefore, in order to secure the ends of justice and finding judgments referred to above, being applicable to the instant case, the present deserves to be allowed.

9. In view of the afore-referred judgments and facts and circumstances of the case, the order dated 15.01.2019 passed by learned Judicial Magistrate First Class, Garhshankar, Annexure P-2 is set aside, subject to deposit of Rs.10,000/- with the District Bar Association, Hoshiarpur and the petitioner is directed to surrender before the trial Court on or before 25.06.2023 and he be released on bail subject to furnishing fresh bail bonds.

10. Before parting with this order, it is made abundantly clear that in case the petitioner does not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

(AMAN CHAUDHARY)
JUDGE

15.06.2023

S.Sharma(syr)

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No