

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

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CRM-M-28280-2019

Date of Decision: 27.02.2023

INDERJIT SINGH DHALIWAL

....Petitioner

V/S

STATE OF PUNJAB AND ANR

....Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. G.S.Dhillon, Advocate for the petitioner.

Mr. Kamalpreet Bawa, AAG, Punjab.

AMAN CHAUDHARY, J.

Present petition has been filed under Section 482 Cr.P.C. for quashing the order dated 15.07.2008 (Anneuxre P-15) and order dated 05.07.2012 (Annexure P-16) whereby the property of the petitioner is ordered to be attached by the Court of JMIC, Ludhiana and subsequent proceedings arising therefrom.

Learned counsel for the petitioner contends that the FIR was lodged on 24.12.2007, whereas the petitioner was staying in Canada for the last 20-25 years as specifically mentioned in para 6 of the petition. He further relies on the report of HC Jaspal Singh alongwith statement of witnesses namely Nirmal Singh and Jasvir Singh (Annexure P-9 to P-11 respectively) recorded on the same date wherein they had specifically stated that the petitioner has been residing in Canada from the last around 20/25 years. That, vide order dated 15.07.2088 (Annexure P-15), the petitioner was declared as proclaimed offender. Thereafter, order dated 05.07.2012 (Annexure P-16) was passed for attaching the property of the petitioner.

The petitioner thereafter filed revision petition before the learned

Additional Sessions Judge (Annexure P-17) which was also dismissed without appreciating the submissions made on behalf of the petitioner. He further submits that the procedure as envisaged under Sections 41, 105, and 82 Cr.P.C. has not been followed for summoning the petitioner as he was residing in Canada. He draws the attention of this Court to the provision of Section 105 of Criminal Procedure Code (Cr.P.C) that provides for the procedure to serve summons and warrants to accused residing outside India. A further reference is made to a Notification issued by the Government of India Ministry of Home Affairs, IS Division-II:Legal Cell New Delhi, dated the 11th Feb, 2009, laying down comprehensive guidelines in this regard of reciprocal arrangements to be made by Central Government with the Foreign Governments with regard to the service of summons/warrants/judicial processes. The Ministry of Home Affairs has entered into Mutual Legal Assistance Treaty/Agreements with 22 countries including Canada which provide for serving of documents, thus the proclamation proceedings being in violation thereof are liable to be set aside. To buttress his submission, he places reliance on the judgments of this Court in *Jasbir Kaur vs. State of Punjab and another*, CRM-M-25115-2022, decided on 2.6.2022 and CRM-M-32011-2018 titled as **Jaswant Singh vs. State of Punjab and another**, decided on 6.2.2020. It is his submission that the petitioner is ready and willing to surrender before the Court concerned for which only one opportunity is being sought, which may even be subject to costs.

Learned Counsel submits that in view of the impugned order having been passed against the petitioner, he is apprehending his arrest on reaching India and prays that till the time he surrenders before the Trial Court, his

arrest may be stayed, in light of the order dated 06.02.2020 passed by this Court in the case of **Jaswant Singh** (supra).

Notice of motion.

Mr. Manipal Singh Atwal, DAG, Punjab accepts notice on behalf of respondent State and opposes the present petition on the ground that the impugned order is legal and valid and has been rightly passed by the trial Court on account of non appearance of the petitioner.

Heard.

It is apposite to make a reference to the judgment of this Court in the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Indian Resident residing in Canada and proclamation proceedings had been initiated while she was not in India, as such, the order of proclamation was set aside.

In the case of **Jaswant Singh** (supra), this Court in the interim order dated 10.9.2018, noticed the submission made by the counsel for the petitioner relying on the photocopy of the passport (Annexure A-1) that the petitioner was not in India at the time of registration of FIR on 29.10.2009, as well as, on the day, when he was declared proclaimed offender vide order dated 28.4.2014 and even on the date of passing of the above order, as he was in Italy, directed him to surrender before the trial Court, upon which interim bail was ordered to be granted to him. This Court vide order dated 6.2.2020 though declined the prayer for quashing of FIR made in the petition, but, with regard to the order declaring him a proclaimed offender, directed him to surrender before the trial Court and file an application for regular bail, however, till then he was ordered to be not arrested. He however challenged the said order inasmuch as this Court had declined his

prayer for quashing of the FIR, wherein Hon'ble The Supreme Court of India vide an interim order dated 24.09.2021 passed in SLP (Crl.) No.7072 of 2021, ordered not to take coercive steps against him. Subsequently, vide judgment dated 20.10.2021, the Criminal Appeal no. 1233 of 2021(SLP(Crl.) No.7072 of 2021) was allowed and FIR was quashed, in para 8 whereof it was mentioned that, he had surrendered on 27.10.2018, whereafter he was admitted to interim bail.

Adverting to the facts of the present case, the proclamation proceedings without effecting service upon the petitioner, who was residing abroad as envisaged by the provisions, were not justified. However, still it is incumbent upon him to join the proceedings, for the culmination of the same. Considering the fact that the absence of the petitioner being not willful or deliberate and his readiness and willingness to surrender; for which he is stated to be travelling to India and in case the petitioner is granted one opportunity, to surrender before the trial Court no prejudice shall be caused to any of the parties rather his joining the proceedings shall help expedite the trial. Thus, in order to secure the ends of justice and finding the judgment referred to hereinabove, being applicable to the instant case, the present deserves to be allowed.

In view of the peculiarity of the facts and circumstances of this case and the judgments referred to hereinabove, consequently and as a sequel thereto, the present petition is allowed. The impugned orders dated 15.07.2008 (Annexure P-15) and 05.07.2012 (Annexure P-16) are set aside, Rs. 25,000/- to be deposited with Punjab and Haryana High Court Bar Association Lawyer's Family Welfare Fund Account No. 41564846387, SBI, High Court Branch. The petitioner is directed to surrender before the

trial Court on or before 15.03.2023 and file an affidavit for seeking bail, which shall be decided expeditiously. Till then, no coercive steps be taken against the petitioner. He shall also surrender his passport and will not leave the country without prior permission of the Court or the trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

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

27.02.2023
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[AMAN CHAUDHARY]
JUDGE

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