

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

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CRM-M-39587-2023

Date of decision: 03.10.2023

Sanehpal Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Dinesh Nagar, Advocate for the petitioner.

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 09.06.2012, Annexure P-3 passed by the learned Judicial Magistrate 1st Class, SBS Nagar, whereby the petitioner has been declared as proclaimed offender in FIR No.43, dated 20.04.2009, registered under Sections 323, 324, 148 and 149 IPC at Police Station Rahon, District SBS Nagar (Nawanshahr) as well as quash the aforementioned FIR.

2. Learned counsel for the petitioner at the outset restricts his prayer only to setting aside the PO order with liberty to file fresh petition for quashing of FIR, based on compromise.

3. Learned counsel would contend that the petitioner was a juvenile at the time of alleged incident on 17.04.2009, he being 17 years 9 months. He had left for Italy on 02.05.2009, as is reference in that regard made to the passport, Annexure P-2. The alleged injured Sumit Sharma @ Sunny did not

step into the witness box and the other eye-witness Ramit Sharma had not supported the prosecution version, consequently all the four co-accused, who faced the trial were acquitted by the trial Court vide judgment dated 13.02.2014, Annexure P-4. The mother of the petitioner is stated to be suffering from various ailments being of advanced age. He further submits that the procedure as envisaged under Sections 41, 82, and 105 Cr.P.C. has not been followed for summoning the petitioner as he was residing abroad. He draws the attention of this Court to the provision of Section 105 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 Legal Cell, Government of India, Ministry of Home Affairs, IS Division-II: Legal Cell, New Delhi, dated 11.02.2009, laying down comprehensive guidelines in respect to reciprocal arrangements to be made by Central Government with the Foreign Governments with regard to the service of summons/warrants/judicial processes. The proclamation effect in the village in Punjab cannot be treated to be sufficient to conclude that the petitioner had knowledge of the same and had intentionally absconded or concealed himself, to evade the process, which is the requirement of Section 82 Cr.P.C. Moreso, even a compromise has been arrived at between the parties on 01.09.2023, Annexure P-6. Further that the absence of the petitioner was neither wilful nor deliberate and on account of the reason aforesaid. The mother of the petitioner being severely ill and on bed rest, he is travelling to India within the next month to tend to her health and is ready and willing to join the proceedings and it is prayed that one opportunity may be granted to him to surrender

before the learned trial Court, even if it is subject to cost. To fortify his submissions, learned counsel for the petitioner places reliance on the judgments of this Court in CRM-M-49283-2021 titled **Gurbir Singh Mundi vs. State of Punjab and another**, decided on 16.12.2021, **Hardev Kaur vs. State of Punjab**, 2018 (2) Law Herald 1256, CRM-M-25115- 2022, titled as **Jasbir Kaur vs. State of Punjab and another**, decided on 2.6.2022, CRM-M-38014 of 2022 titled as **Narinder Kaur vs. State of Punjab and others** decided on 11.10.2022, CRM-M-32011-2018 titled as **Jaswant Singh vs. State of Punjab and another**, decided on 6.2.2020 and order dated 24.09.2021 passed in SLP (Crl.) No.7072 of 2021 filed by the above petitioner-Jaswant Singh, judgment dated 20.10.2021 in Criminal Appeal no. 1233 of 2021 (SLP (Crl.) No.7072 of 2021), which was allowed.

4. Notice of motion.

5. Ms. Himani Arora, AAG, Punjab, who has appeared on receipt of advance copy of the petition, opposes the same by submitting 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.

6. Mr. Ashish, Advocate for Ms. Vibha, Advocate, accepts notice on behalf of respondent No.2 and affirms the factum of compromise as also that he has instructions to state that the said respondent has no objection in case the petitioner is granted one opportunity to surrender before the trial Court.

7. Heard the learned counsel and perused the file.

8. 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-Resident Indian residing in Canada and proclamation proceedings had been initiated while she was not in India, as such, the order of proclamation was set aside.

9. In **re: Hardev Kaur's** case (supra), the order of proclamation was set aside in a case, where the compromise had been arrived at between the parties and no objection had been given by the complainant for setting aside the same.

10. In **re: Narinder Kaur's** case (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.

11. Similarly, 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 06.02.2020 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.

12. The very purpose of initiation of proclamation proceedings, is to compel and secure the presence of the accused to face trial and establish the rule of law, as also to ensure finalization of the proceedings.

13. Adverting to the facts of the present case, the reasons for non-appearance of the petitioner were justified particularly in view of the fact that he was declared proclaimed offender without compliance of mandatory provisions of Section 82 and 105 Cr.P.C. in letter and spirit. At times, the accused can be prevented by sufficient reasons to put an appearance before the Court and such an absence cannot necessarily be construed as deliberate and wilful. However, it is incumbent upon him to join the proceedings, before the trial Court, for the culmination of the same.

14. Keeping in view the facts and circumstances of the case, judgments referred to hereinabove, the readiness and willingness of the petitioner to surrender and join the proceedings, which would help in expediting the trial, his aged mother being suffering from several ailments, for which purpose he is stated to be travelling to India; the dispute between the

parties also having been compromised, the present petition deserves to be and is allowed, in the interest of justice, so as to take it to its logical end. Accordingly, the impugned order dated 09.06.2012, Annexure P-3 is set aside subject to surrender by the petitioner before the trial Court on or before 14.11.2023 and depositing Rs.25,000/- with the Punjab and Haryana High Court Bar Association Lawyer's Family Welfare Fund. On furnishing bail/surety bonds, the trial Court shall release him on bail subject to its satisfaction. He is also directed to furnish an undertaking by way of an affidavit that she will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. The trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case. Till then, no coercive steps be taken against the petitioner.

15. The present petition is allowed in part and as prayed, liberty is granted to the petitioner to file a petition afresh as regards prayer of quashing of FIR based on compromise is concerned, after he has surrendered in terms of this order.

16. 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.

03.10.2023
ashok

(AMAN CHAUDHARY)
JUDGE

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