

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

120

CRM-M-42483-2023

Date of decision: 31.08.2023

Ramandeep Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Navneet Singh, 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 08.12.2012, Annexure P-2 passed by the learned Chief Judicial Magistrate, Fatehgarh Sahib, whereby the petitioner has been declared as proclaimed offender/absconder in FIR No.03, dated 11.01.2009, registered under Sections 447, 427, 506, 379, 148 and 149 IPC at Police Station Khamano, District Fatehgarh Sahib as well as quash the aforementioned FIR on the basis of compromise dated 02.04.2021, Annexure P-4 and all other consequential proceedings arising therefrom.

2. Learned counsel contends that the petitioner had left India on 25.07.2011 and has since then been residing in U.K. Thereafter, he was declared proclaimed offender by the trial Court vide order dated 08.12.2012, Annexure P-2, by referring to the report of non-bailable warrants received back with remarks that he had gone abroad. Reference is also made to the

averments made in para 3 of the petition to submit that even in the statement of the serving, Head Constable Nazar Singh dated 03.11.2012, it was stated that he was not residing in Village Bhuttan but in U.K. still. 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 abroad. 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 proclamation in the village in Punjab cannot be treated to be sufficient to conclude that the petitioner had knowledge of proceedings of proclamation and had intentionally absconded to evade the process. Moreso, during the interregnum, the above FIR has been quashed against the co-accused by this Court vide order dated 27.05.2015, Annexure P-6, on the basis of compromise dated 16.04.2015, Annexure P-5, arrived at between the parties. The complainant has executed another affidavit dated 02.04.2021, Annexure P-9 specifically affirming the compromise and giving no objection. Further that the absence of the petitioner was neither wilful nor deliberate and on account of the reason aforesaid. He 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. The petitioner is coming to India on 19.09.2023, the air-tickets of which produced in Court are taken on record as Mark 'A'. At this stage, he restricts his prayer only for setting aside the PO order with liberty to file afresh petition for quashing of FIR, based on compromise. 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 and CRM-M-25115- 2022, titled as **Jasbir Kaur Vs. State of Punjab and another**, decided on 2.6.2022 and CRM-M-38014 of 2022 titled as **Narinder Kaur Vs. State of Punjab and others** decided on 11.10.2022 and CRM-M-32011-2018 titled as **Jaswant Singh vs. State of Punjab and another**, decided on 6.2.2020, 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.

3. Notice of motion.

4. 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.

5. Mr. Abhishek Dull, Advocate, for respondent No.2 accepts notice on behalf of respondent No.2 and affirms the factum of compromise and the affidavit Annexure P-9 and that he has instructions to state that the

said respondent has no objection.

6. Heard the learned counsel and perused the file.

7. 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.

8. 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.

9. 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.

10. 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 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.

11. 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.

12. 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 CrPC in letter and spirit. Considering the fact that the absence of the petitioner was not wilful or deliberate and his readiness and willingness to surrender and join the proceedings, for which he is stated to be travelling to India; the dispute between the parties also having been compromised; based on which, even the FIR in question, qua other co-accused stands already quashed by this Court, thus, in case one opportunity is granted to the petitioner, no prejudice shall be caused to any of the parties. Thus, in order to make the ends of justice meet and finding judgments referred to above being applicable to the instant case, the present

petition deserves to be allowed.

13. In view of the afore-referred orders and the facts and circumstances of the case, the impugned order dated 08.12.2012, Annexure P-2 is set aside subject to surrender by the petitioner before the trial Court on or before 30.09.2023 and depositing Rs.25,000/- with the Poor Patients Welfare Fund, PGIMER, Chandigarh. 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 he 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.

14. 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.

15. 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

August 31, 2023
Ankur

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