

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

CRM-M-51072-2023 (O&M)

Reserved on : 07.12.2023

Pronounced on : 15.12.2023

JASVIR SINGH @ JASBIR SINGH

.... Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. B.S. Jaswal, Advocate for the petitioner.

Mr. Adhiraj Singh Thind, AAG Punjab for respondent No.1.

Mr. Ankit Bhardwaj, Advocate for respondent No.2.

ALKA SARIN, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the order dated 15.11.2018 (Annexure P-8) passed by the learned Trial Court whereby the petitioner has been declared as a proclaimed offender in FIR No.274 dated 17.12.2017 under Sections 376, 506, 34 of the Indian Penal Code, 1860 registered at Police Station City Faridkot.

2. Learned counsel for the petitioner would contend that the petitioner is a resident of Village Boparai, Tehsil Batala, District Gurdaspur whereas his residential address in the FIR is mentioned as a resident of Boparai, Ghuman Kalan, District Gurdaspur. It is further the contention that the petitioner was never served either by way of a registered notice or otherwise. It is further the contention that the offence of rape was alleged only against the accused, namely, Sukhwinder Singh @ Boora and that the said Sukhwinder Singh @ Boora was acquitted. It is only after acquittal that

Sukhwinder Singh, when he came to his village and met the petitioner by chance, and informed him that he was also an accused in the present FIR. Subsequently, the petitioner approached the Lawyer and got the papers and filed the present petition. Learned counsel for the petitioner would further contend that there has been total non-compliance of the provisions of Section 82 CrPC as 30 days clear notice was not given in the order dated 11.09.2018 as the petitioner was directed to be summoned through proclamation on 09.10.2018 i.e. before the expiry of 30 days. It is further the contention that there is no satisfaction recorded by the Trial Court that the petitioner was evading service.

3. Learned counsel for the State would contend that the petitioner had knowledge about the pendency of the proceedings, however, despite the said fact he chose not to appear.

4. I have heard the learned counsel for the parties and have gone through the file.

5. In the present case the proclamation against the petitioner was ordered on 11.09.2018 for 09.10.2018 and the same was published on 15.09.2018 as per the statement of the Executing Official, namely, ASI Rajpal Singh (Annexure P-5). Thereafter, the learned Trial Court adjourned the case from 09.10.2018 to 01.11.2018 and then from 01.11.2018 to 15.11.2018 for awaiting the presence of the petitioner but the same will not be treated as compliance of the provisions of Section 82(1) CrPC, which read as under:-

"82. Proclamation for person absconding:-

If Any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specific place and at a specified time not less than thirty days from the date of publishing such proclamation.

(1) XX XX XX XX

(2) XX XX XX XX".

6. The learned Trial Court could not have extended the statutory period of 30 days by simply adjourning the case for awaiting appearance of the petitioner and was mandatorily required to issue the proclamation again for publication thereof in accordance with the provisions *ibid*. Consequently, the instant petition is allowed and the impugned order dated 15.11.2018 (Annexure P-8) passed by the learned Trial Court is set aside. The petitioner is directed to surrender/join the trial before the Trial Court/CJM/Duty Magistrate concerned within a period of two weeks from today and in case he does so and files an application for bail, the same shall be considered on the same day itself.

7. Disposed off. Pending applications, if any, also stand disposed off.

15.12.2023

Aman Jain

NOTE:

**(ALKA SARIN)
JUDGE**

*Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*