

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

CRM-M-54292-2022

Date of decision: 24.01.2023

Parminder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Gagandeep Goel, Advocate
for the petitioner.

Mr. Arun Luthra, DAG, Punjab.

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DEEPAK SIBAL, J. (Oral)

Through the present petition filed under Section 482 Cr.P.C., the petitioner challenges the order dated 02.03.2022 through which the Judicial Magistrate, First Class, Jalandhar (for short – the Magistrate) has cancelled his bail. Also under challenge is a subsequent order of the Magistrate dated 06.09.2022 declaring the petitioner to be a proclaimed person.

Balbir Singh filed a complaint with the police as per which, the petitioner, a travel agent, had told him that on payment basis, he could arrange a visa for the complainant's son to go to Canada. The complainant agreed. Thereafter, the petitioner and his wife took the complainant's son to Delhi where the petitioner informed the complainant that the complainant's son's visa had been arranged for which he should arrange Rs.20 lakhs. The petitioner and his wife then went to the complainant's house and on their asking, the complainant transferred Rs.6 lakhs in the petitioner's bank

account. Thereafter, the petitioner and his wife took the complainant and his son to Delhi but before that, on the asking of the petitioner and his wife, Rs.14 lakhs was handed over to them in cash by the complainant. When they all reached Delhi two other persons met them. These persons were introduced by the petitioner and his wife as their partners. They then stayed for a night in a hotel. On the next day, the complainant and his son were taken by the petitioner and his wife to the airport where the complainant's son was handed over a passport and a ticket. The complainant's son then entered the airport only to be thrown out by the airport authorities. The petitioner and his so called partners then assured the complainant and his son that they would soon send his son to Australia or New Zealand. On repeated protests by the complainant, Rs.2 lakhs was refunded to the complainant by the petitioner. The balance amount of Rs.18 lakhs was not returned on the pretext that visa for the complainant's son had already been arranged and for flying out of the country they should reach Mumbai. The complainant and his son then went to Mumbai but no one met them there. On being contacted the petitioner told them that he could not come to Mumbai as he had some urgent work to attend. The petitioner further told the complainant and his son that his agent in Mumbai will soon hand over the visa and ticket to them at the airport. However, when the complainant and his son reached the Mumbai airport nobody met them over there. Repeated calls made to the petitioner by the complainant also went unanswered. After being totally harassed at the hands of the petitioner the complainant and his son came back. On repeated protests by the complainant the petitioner then handed over to him a cheque for Rs.18 lakhs which on presentation was dishonoured. On the basis of the afore

allegations, an FIR under Sections 420 and 120-B IPC and Section 13 of the Punjab Travel Professional's Regulation Act, 2014 (for short – the Travel Act) was registered against the petitioner and his co-accused at Police Station, Adampur, District Jalandhar (Rural).

The police investigated the matter and found the petitioner guilty of the offences alleged against him. Accordingly, a report under Section 173 Cr.P.C. was filed on the basis whereof the prosecution sought to prosecute the petitioner for offences under Sections 420 and 120-B IPC and Section 13 of the Travel Act.

Before the report under Section 173 Cr.P.C. was filed by the State, the petitioner had sought anticipatory bail from the Sessions Court at Jalandhar on the denial of which he approached this Court for the same relief which through order dated 12.07.2021 was granted.

As noticed earlier, the petitioner was granted anticipatory bail by this Court on 12.07.2021. Thereafter, on 02.08.2021, the State filed before the Magistrate its final report under Section 173 Cr.P.C. When the said final report was filed, though the petitioner's co-accused was present before the Magistrate, the petitioner was not. Therefore, to secure the petitioner's presence the Magistrate ordered the issuance of summons to him. On the next date of hearing also the petitioner did not appear. However, on the next date i.e. 07.12.2021, he appeared before the Magistrate and on such appearance, he was admitted to bail. On the next effective date of hearing i.e. 03.02.2022 the petitioner again failed to appear before the Magistrate. He sought and got exemption from personal appearance. On the next date i.e. 02.03.2022, yet again the petitioner did not appear and since he was absent without any intimation as also that his

counsel had also failed to put in appearance, the issue with regard to framing of charges could not be taken up by the Magistrate. In the light of the petitioner's conduct, the Magistrate formed an opinion that the petitioner was intentionally attempting to delay the matter. Therefore, the Magistrate cancelled the petitioner's bail and ordered his summoning through non-bailable warrants. In spite of the same the petitioner did not put in appearance on the adjourned date and on the next date as also on the next date to follow forcing the Magistrate to issue a proclamation against him under Section 82 Cr.P.C. on the service of which the petitioner also did not put in appearance. When even after the lapse of 30 days of service of the afore proclamation the petitioner failed to put in appearance before the Magistrate, through order dated 06.09.2022, he was declared a proclaimed person. Even for about two months thereafter the petitioner continued to remain absent from the proceedings.

Learned counsel for the petitioner submits that the petitioner's bail could not have been cancelled on account of a single non-appearance by him and in this regard reliance was placed on a judgment of the Supreme Court in **Bhuri Bai vs. The State of Madhya Pradesh, 2022 SCC Online SC 1779**. Learned counsel also sought to draw support from the judgment of the Supreme Court in **Sushila Aggarwal and others vs. State (NCT of Delhi) and another (2020) 5 SCC 1** to contend that once the High Court had granted anticipatory bail to the petitioner then the same would continue till the end of his trial.

Learned counsel for the petitioner has been heard at length and with his able assistance the material on the record has also been perused.

Through order dated 12.07.2021 this Court granted anticipatory

bail to the petitioner. On 02.08.2021 the State filed the charge-sheet under Section 173 Cr.P.C. before the Magistrate on which date though the petitioner's co-accused were present before the Magistrate but the petitioner was not. In response to the summons issued to procure the petitioner's presence he appeared before the Magistrate and on such appearance he was admitted to bail. The matter was then adjourned and effectively taken up for hearing for the first time thereafter on 03.02.2022 on which date the petitioner sought and got exemption from personal appearance. On the very next date before the Magistrate i.e. 02.03.2022, without any intimation, the petitioner again absented himself from the proceedings. His counsel also did not appear. Due to the petitioner's non-appearance, the Magistrate was precluded from taking up the issue with regard to framing of charges.

In the light of the afore facts, the Magistrate formed an opinion that the petitioner was seeking to delay the proceedings. Resultantly, the Magistrate ordered the cancellation of the petitioner's bail.

On 02.03.2022 i.e. the date when the petitioner's bail was cancelled no reason was given to the Magistrate as to why the petitioner was absent. Even his counsel had not appeared. However, before this Court the reason for the petitioner's non-appearance on 02.03.2022 has been given as the sudden demise of "some close family member". The said reason is found to be absolutely vague as no details are forthcoming as to which of his family member had died and when. Even during the course of hearing clarification in this regard was sought but none was given. No explanation was also offered as to why the petitioner's counsel also could not cause appearance to inform the Magistrate the reason for the petitioner's absence.

The petitioner's evasive conduct does not end here. After

02.03.2022, the next effective date of hearing was 25.04.2022. The petitioner cannot deny knowledge of the proceedings pending against him. In spite of the same neither did he appear before the Magistrate on 25.04.2022 nor on even the next date i.e. 14.07.2022 on which date the Magistrate was constrained to initiate proceedings under Section 82 Cr.P.C. as to why the petitioner be not declared to be a proclaimed person. The petitioner does not deny that on 04.08.2022 he was served in the proceedings initiated against him under Section 82 Cr.P.C. but even after 30 days of such service he failed to cause appearance in the proceedings pending against him. That being so, through order dated 06.09.2022 the Magistrate rightly declared the petitioner as a proclaimed person.

After the grant of anticipatory bail, the petitioner has taken the Court proceedings rather casually. He is a declared proclaimed person. Such declaration is found to have been made after following the prescribed procedure. Though his non-appearance, the petitioner has been successful in delaying the taking up of the issue of framing of charges. He has played truant with the Court. He deserves no leniency.

In the facts of the present case the judgments cited on behalf of the petitioner in Bhuri Bai's case (supra) as also Sushila Aggarwal's case (supra) would be of no help to the petitioner.

In Bhuri Bai's case (supra) the appellant before the Supreme Court (hereinafter referred to as Bhuri Bai) was facing prosecution under Section 304-B/498-A IPC. She was arrested on 16.07.2021 and granted bail by the Trial Court on 05.08.2021. While considering an application for bail by Bhuri Bai's co-accused the High Court *suo moto* cancelled Bhuri Bai's bail by considering and relying upon Bhuri Bai's conduct of the period prior

to the grant of bail to her. In that context the Supreme Court set aside the order of the High Court after holding that for cancellation of bail the conduct of a person which was of a period prior to the grant of bail should not be considered and that for cancelling bail only supervening circumstances are relevant as also that an order to cancel bail should be passed with caution and circumspection. The case in hand is different. The petitioner's bail was cancelled after considering his evasive conduct after the grant of bail to him. Thereafter, he has been declared to be a proclaimed person. He has consistently played truant with the Court. For the same reasons Sushila Aggarwal's case (supra) would also not apply.

Dismissed.

The Trial Court is directed to conclude the petitioner's trial within six months, in accordance with law.

January 24, 2023
Jyoti 1

(DEEPAK SIBAL)
JUDGE

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