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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M No. 64078 of 2023
Date of Decision:-20.12.2023

MOHD. YUSUF

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Deepanshu Matya Advocate
for the petitioner.

Ms. Gaganpreet Kaur, DAG, Haryana.

SANJIV BERRY, J.

The instant petition under Section 482 Cr.P.C. has been preferred by the petitioner for setting aside of the impugned order dated 25.04.2023 (Annexure P-8) passed by learned Judicial Magistrate First Class, Gurugram in case titled as *State of Haryana vs. Mohd. Yusuf*, bearing No. CHI/242/2020, wherein petitioner has been declared as proclaimed person in the following FIR:-

FIR No.	Dated	Sections	Police Station
400	29.10.2019	279, 338 IPC	Sector, 56, Gurugram

2. It is *inter alia* contended by learned counsel for the petitioner

that FIR (Annexure P-1) was registered against the petitioner wherein he was granted concession of bail, thereafter he had been appearing in the Court. He submits that challan was presented on 18.01.2020 and the petitioner was granted concession of bail vide order 18.01.2020 (Annexure P-2) on the same date and the case was adjourned to 24.04.2020. He submits that in the meanwhile due to Covid-19 pandemic the functioning of the Courts was disturbed and after the normalization of the position petitioner having shifted to home town could not receive any notice for his appearance and as a result his bail was cancelled, ultimately declared as proclaimed person vide impugned order dated 25.04.2023 (Annexure P-8). He submits that the impugned order has been passed without following the due procedure laid down under Section 82 Cr.P.C. and as such the impugned order is liable to be set aside.

3. Notice of motion.

4. On the asking of the Court, Ms. Gaganpreet Kaur, DAG, Haryana, who is present in Court accepts notice on behalf of respondent-State and submits that as per the information, there is no other criminal case registered against the petitioner.

5. Arguments heard.

6. Considering the respective submissions and perusing the record, it transpires that admittedly the petitioner was granted concession of bail vide order dated 18.01.2020 (Annexure P-2). It is also not disputed that thereafter due to Covid-19 Pandemic the functioning of the Courts got crippled. It is the version put forth by the petitioner that due to Covid-19 he had shifted to his home town and after normalcy of Covid condition he never

got any notice to appear in the Court, due to which he could not appear in Court. In the meanwhile due to non appearance of petitioner his bail was cancelled and he was ordered to be served with non-bailable warrants. As per the learned counsel for the petitioner the absence of petitioner was not intentional but due to the fact that he has shifted to his native place due to losing job on account of Covid-19. It is evident from Annexure P-3 that on 21.03.2022 bail of the petitioner was cancelled, thereafter vide order dated 24.11.2022 (Annexure P-5) proclamation was ordered to be issued for his service for 17.03.2023. From the order dated 17.02.2023 it transpires that the proclamation was not issued and it was ordered to be issued again on 25.04.2023 and ultimately the petitioner was declared as proclaimed person vide impugned order (Annexure P-8). It is not disputed that the proclamation was issued at the address of the petitioner as given in the challan, whereas the petitioner in fact residing at Lucknow and no such proclamation was effected at that address. Moreover, it is a case where the petitioner has been alleged to have committed bailable offence triable by the Court of Magistrate and the absence of the petitioner has been due to the fact that due to onslaught of Covid-19 he lost his job and shifted to his native place Lucknow, there is nothing on record that the petitioner was ever informed through any notice about the date fixed in the trial Court. As per learned State counsel there is no criminal case against the petitioner.

7. Therefore, considering the above facts and circumstances of the case the present petition is hereby allowed and the impugned order dated 25.04.2023 (Annexure P-8) passed by learned Judicial Magistrate First Class, Gurugram in case titled as *State of Haryana vs. Mohd. Yusuf*, bearing

No. CHI/242/2020 is hereby set aside and the petitioner is directed to appear in trial Court/ Duty Magistrate on or before 12.01.2024 and in that event he is ordered to be admitted to bail on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Court; undertaking to regularly appear on each and every date; not to leave the country without prior permission of the Court; and not to tamper with evidence of prosecution in any manner.

- 8. The Petition stands allowed.
- 9. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

(SANJIV BERRY)
JUDGE

20.12.2023

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |