

CRM-M-4891-2024
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
110

CRM-M-4891-2024
Date of Decision: 02.02.2024

Jarnail Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. A.D.S. Sukhija, Advocate
for the petitioner.

Ms. Swati Batra, DAG, Punjab
(Through VC)

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
126	17.06.2003	Sadar Malout, Sri Muktsar Sahib	406, 409, 120-B IPC and 13(1)(d) read with 13(2), 88 of Prevention of Corruption Act.

1. Challenging the order of proclamation on being declared as a proclaimed offender, the petitioner, aged 75 and now a citizen of Canada, has come up before this court under section 482 of the Code of Criminal Procedure, 1973 (CrPC).
2. Counsel for the petitioner has handed over a photocopy of the petitioner's passport, which is taken on record.
3. The petitioner's counsel submits that considering the petitioner's age and poor health, he be given reasonable time to appear before the concerned Court, and in case he appears, the trial Court be directed also to release him on interim bail till the decision of the main bail petition.
4. The State counsel submits that the petitioner's objective can be to dispose of his properties, and he is simply taking an excuse to enter India, try to dispose of his property(s), and run away. On this, Mr. A.D.S. Sukhija, Advocate, submits that the petitioner undertakes that he shall not execute any Power of Attorney or affidavit or

CRM-M-4891-2024

sale deed or mortgage deed against any of his properties or government documents until he gets bail from the concerned Court and after that also if the concerned Court while granting bail puts a condition of this restriction then he shall also abide by that. The petitioner's counsel submits that he shall also abide by all the conditions imposed by the trial Court, including not leaving India. He further submits that considering the petitioner's age, the trial should be decided on top-most priority without any delay as all his co-accused have been acquitted and prayed for direction to trial Court to expedite the trial. Counsel appearing for the State has strenuously opposed this petition, including the limited relief as confined by the petitioner.

5. The case that led to the petitioner being declared a Proclaimed Offender has its roots in the FIR captioned above. Although the petitioner was not directly named in the FIR, the subsequent investigation found his involvement, and he was arraigned as an accused. A reference to Annexure P2 would reveal that the petitioner had also associated himself with the inquiry up to 2007. On 04.01.2007, the petitioner left India and returned only on 05.04.2009, and on returning to India, he came to know that the trial had been initiated in the above captioned FIR. Subsequently, on coming to know about initiation of the trial, the petitioner had filed an anticipatory bail application in 2009, and the said petition was listed as CRM-M-35977 of 2009 wherein vide order dated 29.04.2010 (Annexure P-2), a Coordinate Bench of this Court took into consideration the fact of the petitioner was out of India and unaware of the pending case and also because all other co-accused have been granted anticipatory bail, as such, he was asked to appear before the trial Court and file an application for regular bail. The concerned Court also clarified that in case the petitioner appears before the concerned Chief Judicial Magistrate, the pending proceedings to declare as a Proclaimed Offender shall stand closed. For reference, the said order dated 29.04.2010 is reproduced below:

"It is contended by learned counsel for the State that the petitioner has although joined the investigation, however, taking into account the fact that he was declared proclaimed offender on 20.07.2009, relevant conditions be accordingly imposed upon him. The stand of the State is fair.

On facts, the petitioner was not named in the FIR. However, he associated himself with the enquiry upto the year 2007. Thereafter, he left for abroad on 04.01.2007 and came back on 05.04.2009. He was not aware of the pending case against him in Court. It is also contended that all other co-accused have been granted anticipatory bail meanwhile.

In view of the above, the petitioner is directed to appear before the trial Court and file an application for regular bail. In case, the petitioner appears before the Chief Judicial Magistrate, Muktsar, where the proceedings qua him for declaring him proclaimed offender are pending, he shall be released on his

CRM-M-4891-2024

furnishing bail bonds to the satisfaction of the said Court. However, he shall not leave the Country without prior permission of the Court concerned."

6. As apparent from the order dated 29.04.2010 (Annexure P2), the petitioner had filed bail application No. 35977 of 2009 in the year 2009 itself after he had returned to India on 05.04.2009. However, due to reasons beyond the petitioner's control, the said bail petition was not decided in 2009 but was decided on 29.04.2010. Although vide order dated 29.04.2010, it has been mentioned that the petitioner had returned to India on 05.04.2009, it appears that the petitioner had again left India and returned on 05.12.2009. This is evident from the self-attested photocopy of the passport, which has been handed over to this Court by Mr. A.D.S. Sukhija, Advocate for the petitioner. After returning to India in December 2009, the petitioner left India on 18.01.2010, i.e., after staying in India for one month and 13 days. On asking of this Court, the petitioner's counsel has handed over an entire copy of the passport from front cover to back cover; it is further evident that this passport was issued on 20.11.2009, i.e., after the petitioner had returned on 05.04.2009, and it is apparent from the passport that the petitioner had come back to India for issuance of the passport. Be that as it may, it cannot be doubted that the petitioner had filed a bail application in the year 2009, and even if it is assumed that the petition was filed on 31.12.2009, it was not decided for 04 months, and as such, the petitioner's frustration could be well imagined. Consequently, observations made in an order dated 29.04.2010 that the petitioner shall not leave India without prior permission of the Court did not come into force because before the bail order was passed, he had already left India.

7. A reference to the order dated 29.04.2010 makes it explicitly clear that the Coordinate Bench of this Court had directed the petitioner to appear before the trial Court and file an application for regular bail, and it was further directed that in case he appears before the concerned Chief Judicial Magistrate, Muktsar, where the proceedings qua him for declaring him as Proclaimed Offender were pending, he shall be released on furnishing bail bonds to the satisfaction of the said Court. Thus, there was no expiry date for this order. The Court did not give any time to the petitioner to surrender; however, since the Coordinate Bench had clarified "where the proceedings qua him for declaring him proclaimed offender are pending," implies that the petitioner was supposed to have surrendered till proclamation proceedings were pending. As such, the order dated 29.04.2010 automatically ceased to operate the moment the proclamation proceedings which at that time were pending against the petitioner had concluded. The petitioner has annexed the order dated 05.04.2014 (Annexure P5) vide

CRM-M-4891-2024

which the petitioner is declared as a Proclaimed Offender. Given the above, the order dated 29.04.2010 had ceased to operate beyond 05.04.2014.

8. Despite being aware of the pendency of the criminal case, the petitioner did not return to India. Further, even if it is assumed that the petitioner was not aware of the bail order, the fact is clear from the perusal of the copy of the petitioner's passport, which does not bear any stamp of departure or arrival on his Indian Passport during the relevant period. After that, the petitioner got citizenship of Canada and was given a Canadian passport w.e.f. 28.11.2016 valid till 28.11.2026. The petitioner's counsel had handed over a photocopy of the Canadian passport, which they claim to be authentic, and as such it is taken on the record.

9. I have gone through the passport issued by Canada, as per which the petitioner has yet to travel out of Canada to date. However, the petitioner had applied for an Indian visa, which was granted to him initially from 25.07.2017 to 24.07.2018 under category T1, and another visa, valid from 24.05.2019 up to 23.05.2029 under category T1. In addition to this, the petitioner got another Indian visa under category T, which is valid from 07.07.2023 to 06.07.2028. Thus, the petitioner had a valid Indian visa and could return to India.

10. The petitioner's stand for not returning to India is mentioned in paragraph 5 of the petition, whereby his wife had fallen ill, and the petitioner has annexed the medical record as Annexure P3. As per the medical record, she was under treatment. In paragraph 9, the petitioner submits that in 2018, on coming to know about the acquittal of all the accused in the criminal trial, he wanted to come and face the trial, but then he also came to know that he had been declared as Proclaimed Offender. The petitioner has not given any valid explanation as to why he did not come. This Court is not accepting any of the petitioner's explanations for not returning to India. However, the petitioner is now 75 years old, and as apparent from Annexure P4, vide judgment dated 14.03.2018 passed in Session's case No.01/2014 bearing date of registration as 17.12.2013 whereby all the co-accused already stand acquitted. The petitioner was at serial no.4, and it has been mentioned that he was not tried because he is a Proclaimed Offender.

11. I have gone through this judgment, and the petitioner's case is undoubtedly at par with the co-accused who stands acquitted. However, this observation is only for the purposes of adjudicating the present petition and for nothing else.

CRM-M-4891-2024

12. The impugned proclamation order issued under Section 82, CrPC, does not align with the statutory provisions. Section 82 of CrPC, 1973, explicitly mentions that the proclamation shall be published in some conspicuous place where such person ordinarily resides. It is unbelievable that the police officials would not be aware that the petitioner was not residing at the given address. It also cannot be believed that even if an affixation was done on the old address of the petitioner, then somebody was obligated to convey the same to the petitioner. This proclamation violated Section 82 of CrPC, failing to pass the scrutiny of correct affixation. Although there is a massive delay in proclamation proceedings, which have been pending for a decade, the petitioner on his own came before this Court, undertaking to attend the trial, and it is not the police who have been able to catch him. On this ground alone, the present petition deserves to be allowed, and the impugned proclamation order dated 05.04.2014 can be set aside, provided that now the petitioner appears before the Sessions Court at Muktsar Sahib and proves his bona fide that he is, in fact, interested in facing the trial and not to run away from it. The petitioner's counsel, who is in contact with the petitioner and has supplied the photocopies of the passport, is to inform this order and the direction to appear before the trial Court to the petitioner and given the fact that the petitioner's counsel was able to communicate with the petitioner regarding submission of the passport, it shall be presumed that petitioner's counsel had informed the petitioner about this order. It is now the petitioner's counsel to take appropriate measures regarding information, and he shall be permitted to file an application placing on record such communication with the petitioner to this Court by filing an application under Section 482 CrPC in this petition itself.

13. The primary object of the service is to secure the accused's presence at trial. The petitioner approached this court independently, establishing the bonafide at this stage. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case, and also for the reasons mentioned above, the ends of justice would meet if the impugned proclamation order shall stand quashed qua the petitioner provided he complies with the all the observations and directions made in this order. Thus, exercising the inherent powers under section 482 CrPC, it would be appropriate to grant the following limited relief to the petitioner, subject to the compliance of the conditions mentioned in this order.

14. The State's counsel submitted that if this Court is granting any concession to the petitioner, it must be subject to some reprimand. The petitioner's counsel declared that

CRM-M-4891-2024

if this court imposes reasonable and affordable costs, the petitioner shall deposit the same.

15. The petitioner's counsel submits that given the delay on the part of the petitioner of not coming to India, the petitioner shall not object in case the Court imposes some compensation/ cost payable to the Bar Association, Muktsar Sahib. However, the petitioner's counsel further submits that since the petitioner is sick and aged about 75 years and his financial condition is not strong enough, he would be unable to pay the enormous amount, and he has agreed that he will pay Rs. 30,000/-. Given above, by the next date, the petitioner shall deposit a sum of Rupees Ten Thousand each in the account of following and hand over its receipt to the concerned Court(s).

1. Bar Association, Muktsar Sahib, Punjab
2. Bar Association of Punjab & Haryana High Court.
3. "AJIT SINGH POLICE WELFARE FUND"
ACCOUNT NO. 12171450000081,
HDFC BANK, SCO 3, SECTOR 15-C, CHANDIGARH-
160015, RTGS/NEFT IFSC: HDFC0001217,

16. The petitioner is directed to surrender before the concerned court **on or before 16-03-2024**. On or before this date, if the petitioner files bail application(s) before the concerned Court(s) of the concerned district, the petitioner's arrest shall remain stayed till the disposal of the said bail(s). Given the undisputed fact of the acquittal of the accused who were sent to the trial, this court is requesting the concerned trial court to grant interim bails on the petitioner's surrendering before the majesty of the concerned Court because of the reasons mentioned above and also that the co-accused stand acquitted. Given this, on appearance, the concerned Court, where the petitioner files the bail application, shall release the petitioner on interim bails on the same day, subject to furnishing bail bonds by imposing reasonable conditions that may be deemed appropriate in the background of the accused's conduct. The petitioner is directed to appear on each date before the trial court and not to delay it. Given above, the proclamation order and all non-bailable warrants, LOC issued against the petitioner in above captioned FIR No.126 dated 17.6.2003 shall stand stayed till 17.03.2024.

17. It is clarified that if the petitioner appears before the concerned court, then all warrants issued by the concerned court against the petitioner in the matter mentioned above shall stand recalled and canceled. It is clarified that if the petitioner fails to appear before the concerned court within the time limit mentioned in this order, then this order shall be recalled automatically under section 362, read with 482 CrPC, without any further reference to this court.

CRM-M-4891-2024

18. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

19. *There would be no need for a certified copy of this order, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

20. **The present petition is allowed subject to all undertakings made by the petitioner referred to above, through his counsel.** All pending applications, if any, stand disposed. Liberty reserved to raise the given-up relief(s) in the subsequent petition(s), if the need so arises.

(ANOOP CHITKARA)
JUDGE

02-02-2024
Sonia Puri/AK

Whether speaking/reasoned: Yes
Whether reportable: **YES.**