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

**CRM-M-7722-2024 (O&M)
Date of Decision : 23.08.2024**

SUKHMAN SURI

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Rehat Bir Singh Mann, Advocate and
Mr. Syed Arhan Masud, Advocate
for the petitioner.

Mr.Pardeep Bajaj, DAG, Punjab.

Ms. Salina Chauhan, Advocate,
for the complainant.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition, challenge is thrown to the order dated 20.12.2023 (Annexure P-1) passed by the learned Chief Judicial Magistrate, Ludhiana, in case FIR No.165, dated 05.08.2022, registered at Police Station Sarabha Nagar, District Police Commissionerate Ludhiana, under Sections 420, 467, 468, 471 and 120-B of the IPC, by virtue of which the petitioner has been declared a 'proclaimed offender', alongwith all other consequential proceedings arising therefrom. Besides, he seeks quashing of warrants (bailable or non-bailable) issued against him, and further to declare the arrest of the petitioner in pursuance thereof by the investigating agency vide order dated 10.02.2024 as illegal.

SUBMISSIONS MADE BY LEARNED COUNSEL FOR THE PETITIONER:-

2. In asking for the relief (*supra*), learned senior counsel for the petitioner submits that the petitioner was not in India, at any during when the exercise of service of non-bailable warrants upon her was carried out. He further draws attention of this Court towards a report of the executing constable concerned, dated 25.09.2023 (Annexure P-13), to submit that it is a clinching documentary evidence demonstrating the factum of the petitioner having been gone abroad, and this fact was concealed from the learned magistrate, seeking the service of the non-bailable warrants, and this was done with the obvious reason to obviate the exercise of effecting service of non-bailable warrants, upon a person residing abroad as per provision, envisaged under Section 105 Cr.P.C.

3. Secondly, learned counsel for the petitioner in an endeavour to throw challenge to the legality of the impugned order (*supra*), submits that without adhering to the procedure under Section 82 Cr.P.C. the order of proclamation has been passed, as no statutory time period of 30 days, had been elapsed, before declaring the present petitioner as a proclaimed offender. While continuing with his submissions, he submits that on dated 03.11.2023, notice of proclamation was shown to have received duly effected, however, the perusal of the proclamation reveals that same was affixed at the non-existent address of the petitioner on dated 11.10.2023, and obviously, the statutory time period of 30 days has not been elapsed and learned magistrate concerned, has adopted an illegal procedure to show the compliance of statutory period of 30 days, by simply adjourning

the matter to 20.12.2023, to make the requirement of 30 days as complete, and on the said date, she was declared as a proclaimed offender.

FACTUAL MATRIX:-

4. At this point, facts of the present case are necessary to the appreciated. In fact, the instant case, the prosecution agency was set into motion on a complaint moved by one Virender Kumar and Pardeep Kumar Mishra. On the basis of the complaint, the instant FIR, was registered. Perusal of FIR (*supra*) reveals that it was in fact initially registered against three persons, Asheem Soni, Sona Kumar and Dalip Kumar, and during investigation the supplementary statement of some other employee of the company was recorded on dated 14.08.2023, and on the basis of said statement the present petitioner was arraigned as an accused on 14.01.2023. Thereupon, on account of the petitioner's not joining the investigation, non-bailable warrants against her were issued, and finally on account of non-execution thereof, the petitioner was declared offender vide impugned order dated 20.12.2023.

5. What reflects from the study survey of the petition is that prior to the registration of instant FIR, the petitioner was living abroad. The non-bailable warrants executed against the petitioner could not be executed on account of her being living abroad, and this fact is very well reflects from the report of the executing constable dated 25.09.2023 (Annexure P-3). The relevant extract thereof reads as under:-

“.....Raid was conducted on the given address of accused Sukhman Suri in the said case and it came out that accused Sukhman Suri has gone abroad. Therefore,

through this application, it is prayed that proclamation for declaring accused Sukhman Suri as P.O. be issued.”

6. Despite the specific report of the executing officer concerned, that the petitioner is living abroad, the learned CJM concerned, instead of proceeding as per the requirement of law, i.e. to summon the petitioner through embassy concerned, issued proclamation *qua* the petitioner, at her old place of residence. It is not under dispute that the petitioner settled abroad in July/August, 2022, i.e. much prior to the registration of the FIR (*supra*), and before she was arraigned as an accused she travelled twice India. Since the petitioner was not aware about her being arraigned as accused in the FIR (*supra*) in August, 2023, she landed in India on dated 10.02.2024, whereupon, she was detained by the immigration authority as LOC arising out of the instant FIR, was issued against her. Thereupon, she was arrested by the investigating officer in the present FIR at about 7:30 p.m. i.e. after the sunset, and she was produced before the Metropolitan Magistrate, New Delhi, for the purpose of transit remand, which was declined vide order dated 10.02.2024 (Annexure P-6) for the reasons, which reads as under:-

“On a consideration of the entire material placed before me, I do not consider it a fit case for grant of transit remand for the following reasons:-

1. The timing of arrest is 7:30 pm i.e. past sunset and the accused is a woman, who could not be arrested except in compliance of S. 46(4) Crpc.
2. No exceptional circumstances are made out to arrest after sunset. Admittedly, no permission was taken by the IO.
3. Accused was apprehended on her arrival to India at 1:20 AM today and was detained by FRRO in light of LOC against her. Intimation was given to concerned PS. Despite so, arrest was made after sunset at 7:30 PM. The reason stated by the IO for not arriving at time from Ludhiana is traffic jam. The same cannot be considered.

4. Admittedly the applicant was residing abroad at the time of declaration of PO. Certainly, she could not have been served.

5. Perusal of FIR reveals that the main allegation is against husband of applicant. To indicate an allegation against applicant. Ld. Counsel for complainant has produced a GD entry no. 23 dated 14.08.23 at PS. The entry reveals that applicant was part of conspiracy. Interestingly, it is not explained as to how the complainant came in possession of a confidential document of the IO. Ld. Sr. Adv. has alleged connivance.

6. No application for permission to arrest the applicant is moved. The application for transit remand is moved by an officer of the rank of Asst. Sub. Insp, whereas it ought to have been moved by an officer of at least sub-inspector rank.”

7. Thereupon, she approached this Court by filing instant motion, for quashing of the impugned order (*supra*).

8. A co-ordinate bench of this Court while issuing notice of motion vide order dated 13.02.2024, directed the petitioner to avail efficacious remedy within a period of next 7 working days, subject to deposit of Rs.15,00,000/- by her with the Registry of this Court, within next two days, and further directed that no coercive action be taken against the petitioner till then.

9. The petitioner in compliance to the directions vide order (*supra*), deposited Rs.15.00 lakhs by way of a demand draft, and also preferred anticipatory bail petition before the court below, which was declined, therefore the petitioner approached this Court for the relief of anticipatory bail, vide CRM-M-38060-2024, and this Court granted the relief of anticipatory bail vide order dated 14.08.2024, which was later on confirmed vide order dated 23.08.2023.

SUBMISSIONS MADE BY LEARNED STATE COUNSEL:-

10. On the other hand learned State counsel assisted by learned counsel for the complainant vociferously opposed the asked for relief, by the petitioner.

ANALYSIS:-

11. It transpires from the perusal of the instant petition, alongwith the record that despite there being a specific report of the executing official, that the petitioner was living abroad, no efforts were made to serve the petitioner personally through the embassy of India located in USA. Therefore, the satisfaction recorded by the learned CJM concerned, to the effect that the petitioner is absconding and concealing herself to avoid execution of non-bailable warrants is in fact the incorrect satisfaction. To substantiate the above observation this Court can safely place reliance upon “**Jagjit Singh and ors. vs. State of Punjab**” (in CRM-M-51993-2021, decided on 20.12.2021, wherein it was held that:-

“5. Moreover, since the petitioners, from the date of registration of the FIR (supra), and, uptil now, are in a foreign land, and, hence they could not render cooperation to the investigating officer concerned, thereupon, it was imperative for the investigating officer concerned, to even if he intended to secure their appearances before him, or before the Court of law, to ensure that personal service of the process of Court, became through the embassy of India, located in U.K., hence effected upon, on each of the accused. However, the afore evidence is grossly amiss. Consequently, upon a valid personal service being made upon the accused by the investigating officer concerned, through the embassy of India, located at United Kingdom, and, thereafter theirs yet not recording their personal appearances, for the relevant purposes, either before the investigating officer, or before the learned Magistrate concerned, thereupon it was open for the latter to thereafter seek issuance of non-bailable warrants, from the learned Magistrate concerned, and, also the afore process was required to become personally served upon the petitioners, at their abode, in U.K. However, neither the investigating officer, has ensured the causing of personal service upon the accused at U.K., prior to the issuance of nonbailable warrants, as issued by the learned Magistrate concerned, nor the learned Magistrate concerned, has ensured that the non-

bailable warrants became served personally upon the accused at U.K., hence through the aegis of the embassy of India, located in U.K. The effect of the afore nonrecoursings, is, that the impugned order declaring the petitioners, as proclaimed offenders, becomes quashed, and, set aside. ”

12. Since the petitioner was not summoned at residing address, therefore, it cannot be concluded that the petitioner was absconding and concealing herself. Therefore, the proclamation notice issued against the petitioner under Section 82 Cr.P.C.suffers from inherent defect. The satisfaction which recorded by the learned CJM concerned, is in fact without any sufficient material on record, therefore, the impugned order requires interference by this Court.

FINAL ORDER:-

13. In view of the above observations, the instant petition, is **allowed** and the impugned order dated 20.12.2023 (Annexure P-1) is hereby **set aside**.

14. Since the petitioner has deposited Rs.15 lakhs with the Registry of this Court in compliance to the directions issued vide order dated 13.02.2024, she is directed to withdraw the same, and thereupon deposit the same before the learned trial court concerned, by way of a demand draft drawn in favour of the complainant, within 30 days from today.

15. The fate of the above demand draft shall be subject to the outcome of of CRM-M-34931-2024, which is pending consideration before this Court.

16. In case of non-compliance of the above directions the instant petition would be construed to be dismissed without any further reference to this Court.
17. All pending application(s), if any, also stands disposed of.

August 23, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No