

S. No.131

2024:PHHC:056327

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

**CRM No.17871 of 2024 in/and
CRM-M-15266 of 2024**

Date of Decision:25.04.2024

Kunal Sharma

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. C.L. Verma, Advocate for the applicant- petitioner.

DEEPAK GUPTA, J. (Oral)

CRM No.17871 of 2024

This is an application moved by the applicant- petitioner under Section 482 Cr.P.C to place on record copies of the zimni orders from 04.08.2021 to 02.04.2024 as Annexure P.5 (colly).

Application is allowed. Annexures P.5 (colly) is taken on record.

CRM-M-15266 of 2024

By way of this petition filed under Section 482 Cr.P.C., petitioner prays to quash the impugned order dated 11.09.2023 (Annexure P.2) passed by learned Judicial Magistrate Ist Class, Ludhiana, whereby the petitioner was declared Proclaimed Person during the proceedings of case FIR No.74 dated 06.04.2021 registered under Sections 323, 341, 506, 427, 34 IPC at Police Station Haibowal Ludhiana, District Ludhiana.

It is contended by learned counsel that due to covid conditions, petitioner could not appear, although he was earlier released on bail on furnishing the personal bonds.

Perusal of the various zimni orders as passed by the trial Court (Annexure P.5 colly) would reveal that on 04.08.2021, petitioner – Kunal was directed to be released on bail on furnishing bonds in the sum of ₹30,000/- with one surety in the like amount. Since surety bond was not ready with him on that day, he was directed to be released on personal bond with the undertaking that he shall produce the surety bond in the Court on the next date. However, petitioner did not appear later on. On some of the dates, application for exemption from personal appearance was moved. Later on, neither any application was moved nor the petitioner appeared and ultimately, his bail was cancelled on 22.10.2021 and his presence was sought to be procured initially by way of warrants of arrest and then through proclamation under Section 82 Cr.P.C.. However, it is also revealed that vide order dated 12.05.2023, proclamation under Section 82 Cr.P.C was directed to be issued for surrender/ appearance of the petitioner in the Court on 02.08.2023. The said proclamation was effected on 01.08.2023 as is reflected in the order dated 29.08.2023. Since the period of 30 days had not elapsed, so learned Magistrate adjourned the case to 11.09.2023 and on that date, as the petitioner did not surrender, so he was declared Proclaimed Person.

Learned counsel for the petitioner is right in contending that the proclamation had been issued for 02.08.2023 but on that date, the period of 30 days had not elapsed and so, petitioner could not be declared Proclaimed Person and as such, the matter had been adjourned by the learned Magistrate. However, on 11.09.2023, on which date, the petitioner was declared Proclaimed Person, there was no proclamation under Section 82 Cr.P.C. As such, all the afore-said

proceeding have been conducted by the Magistrate in complete violation of Section 82 Cr.P.C.

Notice of motion.

Mr. Sahil R. Bakshi, AAG, Punjab, accepts notice on behalf of the respondent- State.

Learned State Counsel could not refute the afore-said contentions which are otherwise also borne from the record.

In the afore-said facts and circumstances, the impugned order dated 11.09.2023 (Annexure P.2) is hereby set aside. At the same time, having regard to the conduct of the petitioner, who despite being granted bail by the Court, did not appear later on, is directed to surrender before the trial Court on or before 09.05.2024. On his surrender, the Court will proceed against the petitioner under Section 446 Cr.P.C and after disposal of those proceedings, shall admit the petitioner to bail. However, it is made clear that till the disposal of the proceedings under Section 446 Cr.P.C., petitioner shall not be taken into custody. If in the meantime, petitioner is sought to be arrested in view of the warrants of arrest/proclamation issued against him, he shall be admitted to interim bail to the satisfaction of Arresting Officer.

Disposed of.

April 25, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No