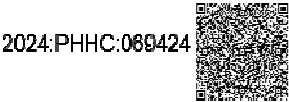


CRM-M No.18222 of 2023 (O&M)



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.18222 of 2023 (O&M)
Date of Decision: 16.05.2024

RAMESH SULTANIA

.....Petitioner(s)

Vs

STATE OF PUNJAB

....Respondent(s)

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Ankur Bansal, Advocate
for the petitioner.

Mr. Siddharth Sandhu, Asstt. A.G., Punjab.

HARKESH MANUJA, J. (Oral)

[1]. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of order dated 24.01.2023 passed by the Sub-Divisional Judicial Magistrate, Nakodar passed in CHI-76 of 2018 dated 09.03.2018 titled ‘State vs. Raj Kumar Sultania’ arising out of FIR No.275 dated 10.10.2012 registered under Section 420 IPC at Police Station City Nakodar, District Jalandhar vide which warrants of arrest has been issued against the petitioner.

[2]. Short reply by way of affidavit of Kulwinder Singh, PPS, Deputy Superintendent of Police, Sub Division Nakodar, District Jalandhar (Rural) has been filed in Court, which is taken on record.

[3]. Learned State counsel informs that in the present case though the petitioner was arrayed as an accused besides two others in the aforementioned FIR, however the final report was presented only against Raj Kumar Sultania and the names of petitioner and one Rohit Sultania were placed in Coloum No.2 of the

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challan as the investigation *qua* both of them could not be concluded on account of pendency of two separate applications filed at their instance, seeking quashing of FIR in hand.

[4]. I have heard learned counsel for the parties and gone through the paper book. In find substance in the submissions made on behalf of the petitioner.

[5]. Perusal of the record shows that the impugned order issuing warrants of arrest against the petitioner has been passed by the Trial Court on mere asking of the Investigating Officer, whereas no satisfaction has been recorded therein as to whether any efforts were made by the Investigating Officer to make petitioner join the investigation or arrest him or the petitioner ever tried to evade his arrest.

[6]. In the light of such reasons, the impugned order dated 24.01.2023 becomes unsustainable and support in this regard can be drawn from the decision rendered by this Court in the case of **Gurjeet Singh Johar vs. State of Punjab & Another, 2020(1) R.C.R. (Criminal) 344**. Para No.14 of the same being relevant is reproduced hereasunder:-

“14. This court also finds that more often then not, the police use the power of the Magistrate to issue warrant of arrest against an accused, only as a tool to avoid its responsibility to carry out the investigation to the logical end; and only for the purpose of getting such an accused declared as proclaimed offender. This methodology is normally adopted by the police just to get rid of the responsibility of putting a report before the Magistrate qua investigation, which otherwise is a mandate of law cast upon the police, or even to avoid arresting an accused in inconvenient cases or inconvenient circumstances. As a result, lots of persons are got declared as proclaimed offenders; and forgotten altogether by the police thereafter. Hence, as observed above, this court is also of the view that before the Magistrate/court has taken cognizance of any offence, the power of issuance of warrants of arrest under any provision of Cr.P.C., on an

application of a police officer, cannot be invoked by the Magistrate as a routine matter. Needless to say, at the cost of repetition; that under the provisions of Cr. P. C. itself, the police have power to arrest a person without warrant even by following such a person at any place in India. Therefore, it is clear that only for arresting a person; the police do not require any warrant as such. Hence, it would not lie in the mouth of the police to allege before the Magistrate, without there being any specific reasons or any barrier in their way, that the accused is evading arrest. During investigation; even if there is some specific legal or factual obstacle or barrier, which makes the arrest without warrant impossible, and if the police intend to seek warrant of 18 of 20 arrest from the Magistrate for such arrest, under any provision of the Cr.P.C., the police are required to specify the obstacle, which the warrant issued by the court would remove and because of which such obstacle or the barrier in way of the police; the accused was succeeding in evading his arrest. Unless, there is any specific obstacle; because of which the police were not able to arrest; and which could not be removed by the police on their own and without the aid of the warrant of the court, the issuance of warrant of arrest by the Magistrate, only on assertion of the police that the accused was evading arrest, would be only a routine exercise, and would be only for the aid of the investigating officer, which could not be done by the Magistrate, as has been held by the Supreme Court in the case of Dawood Ibrahim Kaskar (supra).”

[7]. In view of aforesaid discussion, the present petition is allowed and the impugned order dated 24.01.2023 passed by the Sub-Divisional Judicial Magistrate, Nakodar, District Jalandhar is hereby quashed.

[8]. All pending application(s), if any, shall also stand disposed of.

May 16, 2024
Atik

(HARKESH MANUJA)
JUDGE

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