

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

**Neutral Citation No. 2024:PHHC:047505
CRM-M-17196-2024
Date of Decision: April 08, 2024**

Jatinder Singh **...Petitioner**
Versus
State of Punjab **...Respondent**

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Lakhwinder Singh Mann, Advocate for the petitioner.

DEEPAK GUPTA, J.(Oral)

By way of this petition filed under Section 482 Cr.P.C., petitioner prays for quashing of impugned order dated 09.08.2007 (Annexure P-9), whereby petitioner was declared proclaimed offender by the Court of learned Sub Divisional Judicial Magistrate, Nakodar, during the proceedings of criminal case No.430 of 2004, titled as “***State v. Jatinder Singh and others***”, arising out of FIR No.203 dated 28.07.1998, under Sections 420 and 120-B of IPC, registered at Police Station Nakodar.

2. Learned counsel for the petitioner contends that FIR (Annexure P-1) was registered on 28.07.1998. Petitioner kept on appearing before the Trial Court for 07 years. Then due to financial crunch and in order to earn livelihood, petitioner left India. He absented from trial. His bail was cancelled and warrants of arrest were issued vide Annexure P-2. Ultimately, he was declared proclaimed offender vide order dated 09.08.2007 (Annexure P-9). Learned counsel for the petitioner contends that provisions of Section 82 Cr.P.C. has been clearly violated as 30 days time for appearance was not given to the petitioner from the date of the publication of the notice till the date fixed before the Court. Learned counsel also contends that other co-

accused against whom similar allegations were made in the FIR, have already been acquitted by the Trial Court vide judgment dated 29.10.2007 (Annexure P-10). Learned counsel also submits that petitioner is ready to surrender before the Trial Court concerned, and that he be provided necessary protection.

3. Notice of motion.

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

5. Learned State counsel has strongly opposed the petition by pointing out towards the conduct of the petitioner, who admittedly was on bail before the Trial Court, but absented during trial due to which his bail had to be cancelled. Learned State specifically has drawn attention towards the fact that after his absence in April, 2005, he was declared proclaimed offender in August, 2007 and now the petitioner is approaching this Court after more than 16 years.

6. It is vide order dated 22.04.2005 (Annexure P-2) that the bail earlier granted to the petitioner was cancelled and bonds were forfeited to the State. Warrants of arrest issued against him repeatedly were received back unexecuted. Vide order dated 27.09.2005 (Annexure P-4), proclamation against the petitioner was directed to be issued. As the same was not received back, fresh proclamation was directed to be issued for 24.09.2006, as per order dated 28.07.2006 (Annexure P-5). Proclamation was duly effected at the given address on 20.09.2006, as per the statement of the Serving Constable (Annexure P-7). The said proclamation was for

24.09.2006, as per order dated 14.09.2006 (Annexure P-6). After noticing that proclamation had been received back duly effected, the matter was adjourned to 23.10.2006 and ultimately, petitioner was declared proclaimed offender on 09.08.2007.

7. Learned counsel has rightly contended that there is gross violation of Section 82 Cr.P.C. First of all, while ordering issuance of the proclamation on 27.09.2005, Magistrate did not form any opinion to the effect that petitioner had absconded or was concealing himself, which is mandatory requirement as per Section 82(1) Cr.P.C. Without recording satisfaction by the Court concerned to the effect that, it had reason to believe that the person against whom warrants had earlier been issued, had absconded or was concealing himself and so warrants cannot be executed, the written proclamation could not have been issued. Moreover, vide order dated 14.09.2006, proclamation was issued for 24.09.2006. The proclamation was actually published on 20.09.2006 and thus only 04 days time was given from the date of publication of the proclamation, for surrender/appearance of the petitioner before the Court on 24.09.2006. More than that, petitioner was then declared proclaimed offender on 09.08.2007, despite the fact that for that day, there was no proclamation.

8. In the aforesaid facts and circumstances, the impugned order dated 09.08.2007 cannot be sustained in the eyes of law and as such, the same is set aside.

9. At the same time, the Court cannot ignore the conduct of the petitioner. Concededly, he was on bail. As per him, he kept on facing trial

and then absented for the first time on 22.04.2005 and went abroad. It is not the case of the petitioner that he had taken any permission from the Court for going abroad. He remained absent from the trial for, as many as 19 years and now has approached this Court in April, 2024.

10. Looking into the aforesaid conduct of the petitioner, but at the same time looking into the illegality of the impugned order, which has been set aside, this petition is hereby disposed of with the direction to the petitioner to surrender before the Trial Court on or before 30.04.2024. This is subject to deposit of ₹2 lacs as cost to be deposited by him in Punjab and Haryana High Court Employees Welfare Association (A/c No.37167209613, SBI High Court Branch, IFSC – SBIN0050306). The petitioner has to produce said receipt before the Trial Court concerned. Apart from this cost of ₹2 lacs, the Trial Court shall initiate proceedings under Section 446 Cr.P.C. against the petitioner and only after disposal thereof, the petitioner shall be admitted to bail. 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 on account of having been declared as proclaimed offender, he shall be admitted to interim bail to the satisfaction of the Arresting Officer.

April 08, 2024
sarita

(DEEPAK GUPTA)
JUDGE

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