

121 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19576-2024
Decided on:-23.04.2024

Jaswinder SinghPetitioner..

VS.

State of PunjabRespondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Rajesh Gupta, Advocate
for the petitioner.

HARKESH MANUJA J. (Oral)

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for setting aside the order dated 13.11.2017 (Annexure P-3) passed by the Court of Additional Chief Judicial Magistrate, Rupnagar, vide which, the petitioner was declared as proclaimed person in relation to the proceedings arising out of FIR No.58, dated 28.04.2017, under Sections 406, 420, 120-B IPC, Police Station Morinda, District Rupnagar.

2. The aforementioned FIR was registered against the petitioner as well as his brother on account of having sold certain land out of joint khatta with their collateral. Having not appeared before the Investigating Agency as well as the Trial Court, the petitioner was declared as proclaimed person vide order dated 13.11.2017.

3. Impugning the aforesaid, learned counsel for the petitioner submits that the petitioner was declared as proclaimed person on account of his non-appearance in pursuance to a proclamation under Section 82 Cr.P.C.,

effected on 12.10.2017, whereas, the petitioner went to United States on 23.01.2017 and since then he has not returned and thus, the impugned order declaring him as proclaimed person, is unsustainable.

4. Notice of motion.

5. Mr. Athar Ahmed, DAG, Punjab appears on behalf of the respondents-State and opposes the prayer made herein while submitting that the petitioner was well aware about the registration of FIR as well as proceedings carried out in pursuance thereof; his brother being his co-accused and thus, the impugned order warrants no interference.

6. I have heard learned counsel for the parties and gone through the paper book.

7. A perusal of Annexure P-4 i.e. the passport of the petitioner, reflects that he departed from New Delhi on 23.01.2017 and since then he has been living in United States and thus, the proclamation under Section 82 Cr.P.C., which was ordered and effected against him on 12.10.2017 was meaningless. Apparently, no steps were ever taken so as to serve the petitioner through process of Section 105 Cr.P.C. and thus, the declaration of the petitioner as that of proclaimed person was wholly uncalled for. Mere fact that the brother of the petitioner happens to be his co-accused cannot be termed as sufficient notice to the petitioner for the reasons that in the criminal proceedings arising out of FIR, the same are regulated under the provisions of Code of Criminal Procedure, wherein, a detailed and comprehensive process so as to secure the presence of an individual arrayed as accused has been laid down/contemplated, which primarily flows and originates from Article 21 of the Constitution of India and thus, being inviolable needs to be mandatory complied with. In the absence of

mandatory compliance of Section 105 Cr.P.C., the impugned order dated 13.11.2017 passed by the Additional Chief Judicial Magistrate, Rupnagar, whereby, the petitioner was declared as proclaimed offender/person is unsustainable and the same is therefore set aside. Moreover, the petitioner is willing to join the proceedings before the Trial Court as he volunteers to submit himself before the Court concerned within a period of 04 weeks from today and move an appropriate application seeking anticipatory bail/regular bail.

8. Learned counsel for the petitioner on instructions from the petitioner also submits that he volunteers to serve public cause by providing the following medical equipment to Civil Hospital, Rupnagar within a period of two weeks from today and would furnish the receipt issued against it from the office of Civil Surgeon, Rupnagar along with application, before the Trial Court:-

Sr. No.	Name of Equipment	Qty	Expected estimate
1	Autoclave Drum Medium	3	Rs.4500 to 6000
2	Double LED OT Ceiling Light	2	Rs.50000 to 1,00,000
3	RVG Senser (Radio Visiography) (Dental Digital X-ray)	1	Rs.60000 to 80000
4	Centralized Oxygen Supply		Rs.65000 to 85000

Civil Surgeon, Rupnagar shall prepare an inventory in this regard for its regular inspection by the Director concerned.

A copy of the receipt be forwarded to the office of Advocate General Punjab.

23.04.2024

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Whether speaking/reasoned:
Whether reportable:

(HARKESH MANUJA)

JUDGE

Yes/No
Yes/ No