

2024:PHHC:115437



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

115+128

CRM-M-33688-2023 (O&M)  
Date of decision: 04.09.2024

Khuswant Singh Maan @ Khushwant Singh @ Gagan ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Rishu Bajaj, Advocate  
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. CRM-35733-2024

Allowed as prayed for.

Documents are taken on record as Annexures P-6 and P-7.

2. CRM-M-33688-2023 (O&M)

The instant petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of order dated 15.07.2010 (Annexure P-2), passed by the Judicial Magistrate First Class, Fatehgarh Sahib in case titled as *State vs. Khushwant Singh @ Gagan*, arising out of FIR No. 167 dated 12.10.2009, registered under Sections 406 and 420 of IPC at Police Station Fatehgarh Sahib, whereby the petitioner had been declared a proclaimed person.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in the aforesaid FIR. It is further submitted that the aforesaid FIR had been registered on 12.10.2009, whereas the petitioner had

2024:PHHC:115437



left for USA on 27.11.2008 and since then he had been residing there. He was never served with the notices/warrants issued by the trial Court at his ordinary place of residence in USA and he was not aware of the pendency of the proceedings against him. While stressing that he had been declared a proclaimed offender without following the proper procedure prescribed under Section 82 Cr.P.C., it is urged that the impugned order is liable to be set aside.

4. Learned State counsel has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the trial Court, and as such he had been rightly declared a proclaimed offender. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have also gone through the material placed on record.

6. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the trial Court from the date of initiating proceedings under Section 82 Cr.P.C. as against the petitioner till the date of declaring him a proclaimed offender, I am of the considered opinion that the impugned order dated 15.07.2010 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

7. There are catena of judgments of different High Courts discussing the requirements necessary for issuance and publication of proclamation against an absconder under Section 82 Cr.P.C. and for declaring him as a proclaimed person/offender. These requirements have been discussed

2024:PHHC:115437



from time to time in *Rohit Kumar Vs. State of Delhi : 2008 CrI. J. 2561*, *Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366*, *Devender Singh Negi Vs. State of U.P. : 1994 CrI LJ (Allahabad HC) 1783*, *Gurappa Gugal and others Vs. State of Mysore : 1969 CrI LJ 826*, *Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339*, *Dilbagh Singh Vs. State of Punjab : (P&H) 2015 (8) R.C.R. (criminal) 166*, *Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550*, *Pawan Kumar Gupta Vs. The State of W.B. : 1973 CrI LJ 1368*, *Birad Dan Vs. State : 1958 CrI LJ 965*, *Negi alias Debu Vs. State of U.P. and another, 1994 CrI LJ 1783* and *Pal Singh Vs. The State : 1955 CrI LJ 318*.

8. After going through the material placed on record as well as the copies of zimini orders passed by the trial Court, it is revealed that on 27.04.2010, since the non-bailable warrants issued against the petitioner were received back unserved, the trial Court had ordered for issuance of proclamation against him for 11.06.2010. On 11.06.2010, the proclamation was received executed. However, the case was adjourned to 15.07.2010 awaiting the appearance of the petitioner. Thereafter, since the petitioner did not appear before the trial Court even on 15.07.2010, he was declared a proclaimed offender by passing the impugned order. However, a perusal of the report of the serving police official reveals that the proclamation was executed on 27.05.2010 requiring the petitioner to cause his appearance on 11.06.2010 before the trial Court, which means that he was not granted statutory period of 30 days to cause his appearance before the trial Court. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C., as per which, a specified time of not less than 30 days is required to

2024:PHHC:115437



be given to the accused from the date of publishing such proclamation which is mandatory in nature. Reliance in this regard can be placed upon ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826*** and ***Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339.***

9. A perusal of the statement of the serving police official further reveals that the proclamation was not read over in some conspicuous place of the town or village in which the petitioner was supposed to be residing. As per Section 82 (2) of the Cr.P.C., for publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. Reliance in this regard can be placed upon ***Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368.***

10. Accordingly, in view of the discussion as made above and also in view of the ratio of law as laid down in above cited authorities, the present petition is allowed and the impugned order dated 15.07.2010 (Annexure P-2), passed by the Judicial Magistrate First Class, Fatehgarh Sahib in case titled as ***State vs. Khushwant Singh @ Gagan***, arising out of FIR No. 167 dated 12.10.2009, registered under Sections 406 and 420 of IPC at Police Station

2024:PHHC:115437



Fatehgarh Sahib, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

11. However, the petitioner is directed to surrender before the Court concerned within a period of six weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 438 of the Cr.P.C. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

12. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

13. Till the appearance of the petitioner before the trial Court, his arrest shall remain stayed.

14. It is made clear that in case the petitioner fails to appear before the trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

04.09.2024

*Waseem Ansari*

(MANISHA BATRA)  
JUDGE

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*