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

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CRM-M-34330-2024 (O&M)
Date of decision: 24.07.2024

Jatinder Kumar @ Mangi ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. G. S. Madaan, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. CRM-29320-2024

Allowed as prayed for, subject to all just exceptions.

Copy of order dated 17.11.2009 is taken on record as Annexure
P-13.

2. CRM-M-34330-2024 (O&M)

The instant petition has been filed by the petitioner under Section
482 Cr.P.C. for quashing of order dated 07.01.2010 (Annexure P-7), passed by
the Sub Divisional Judicial Magistrate, Nakodar in case titled as *State vs. Gurjit
Singh @ Jeeta and others*, arising out of FIR No. 279 dated 30.07.2002,
registered under Sections 324, 323, 452, 427, 148 and 149 of IPC at Police
Station Nakodar, whereby the petitioner had been declared a proclaimed
offender.

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

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implicated in this case. The petitioner had initially appeared before the trial Court and was admitted to bail. During the pendency of the case, a compromise was effected between the parties and under a bona fide impression that his presence is not required before the trial Court anymore, he stopped appearing before the Court. Consequent to which, his bail was cancelled by the trial Court. He was never served with the process/summons/non-bailable warrants issued against him. It is further submitted that the petitioner is ready to join the proceedings before the trial Court. It is also argued that he had been declared a proclaimed offender without following the proper procedure prescribed under Section 82 Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

4. Learned State counsel, who has advance notice of the petition, has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the trial Court. Therefore, he was 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 07.01.2010 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

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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 from time to time in *Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561*, *Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561*, *Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366*, *Devender Singh Negi Vs. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783*, *Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 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 CriLJ 1368*, *Birad Dan Vs. State : 1958 CriLJ 965*, *Negi alias Debu Vs. State of U.P. and another, 1994 Cri LJ 1783* and *Pal Singh Vs. The State : 1955 CriLJ 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 since the non-bailable warrants issued against the petitioner were received back unserved, the trial Court had ordered for issuance of proclamation against him on 08.10.2019 for 03.11.2019 and thereafter on 03.11.2019 for 17.11.2019. However, since these proclamations could not be issued due to some lapse on the part of the official concerned, a fresh proclamation was issued for 01.12.2009, vide order dated 17.11.2009. A perusal of this order shows that the petitioner was granted only 14 days' time by the trial Court to cause appearance before it, though as per Section 82(1) of Cr.P.C., the petitioner was required to be given at least 30 days' time to appear before the Court. Further, a perusal of

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the report of the serving police official reveals that the proclamation was executed only on 30.11.2009 requiring the petitioner to cause appearance before the Court on 01.12.2009, which means that the petitioner was granted only 01 day time to cause his appearance before the trial. Hence, all this goes to show that the procedure adopted by the trial Court 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 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. More so, when the case was taken up on 30.11.2009, it was adjourned to 01.07.2010 to await the appearance of the petitioner as the statutory period of 30 days had not elapsed by then. However, the trial Court failed to consider the fact that it could not have extended the time by simply adjourning the case as a fresh proclamation was required to be published once the period between issuance of publication of proclamation and the specified period of hearing was less than 30 days. Reference in this context can be made to ***Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166.***

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 07.01.2010 (Annexure P-7), passed by the Sub Divisional Judicial Magistrate, Nakodar in case titled as ***State vs. Gurjit Singh @ Jeeta and others***, arising out of FIR No. 279 dated 30.07.2002, registered under Sections 324, 323, 452, 427, 148 and 149 of IPC at Police Station Nakodar, whereby the petitioner had been declared a

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proclaimed offender, is quashed with all consequential proceedings arising therefrom.

11. However, the petitioner is directed to surrender before the Court concerned within a period of four 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.

24.07.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No