



CRM-M-39369-2024

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

(121)

CRM-M-39369-2024

Date of Decision : 14.08.2024

Gurbakshish Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gulzar Mohammed, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)

1. This petition has been filed under Section 528 of BNSS for quashing the order dated 22.12.2022 (Annexure P-16), passed by JMIC, Payal, District Ludhiana, vide which the petitioner has been declared as proclaimed person in CRM-118 of 2021, in FIR No.341, dated 03.12.2010 under Sections 420, 467, 468 and 471 IPC, registered at Police Station Payal, District Ludhiana (Annexure P-1).

2. Learned counsel for the petitioner contends that petitioner had no occasion to abscond or evade the process intentionally as he was never served in accordance with law since the petitioner was residing in Canada and was declared proclaimed person in violation of provisions contained under Section 82 Cr.P.C. Learned counsel further contends that the trial Court failed to comply with provisions contained under Section 105 Cr.P.C. as well as the guidelines dated 11.02.2009 (Annexure P-11) issued by Ministry of Home Affairs, Government of India.



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3. Learned counsel for the petitioner further submits that now the compromise has been effected between the parties pertaining to the present case and copies of statement of material witnesses Mandeep Kaur and Rupinder Singh, dated 18.02.2011 are attached with the petition as Annexure P-1/A and P-1/B.

4. Learned State counsel, on the other hand, has submitted that the petitioner despite the proclamation had failed to appear before the trial Court and has been rightly declared proclaimed offender vide the impugned order. In addition, the petitioner is evading the process of Court for the last more than three years approximately which is highly deprecated on his part and he did not comply with the orders of the Court, which shows that he has no respect for the Courts order and a person, who obstructs the process of law and evades from it, does not deserves any concession.

5. Learned counsel for the petitioner now undertakes that petitioner is ready and willing to surrender before the trial Court to associate in the trial proceedings within a period of 45 days from today itself.

6. In the light of above, having regard to the reasons mentioned in the petition as well as arguments raised, this Court is duly convinced that the absence of the petitioner is neither intentional nor deliberate but has occurred due to a *bona fide* error.

7. A person cannot be said to be “abscond” or “evade” the execution of warrant when he had gone to a distant place before the issue of the warrant. Reliance in this regard may be placed on ‘**M.S.R. Gundappa vs. State of Karnataka**’ (1977 Cr LJ NOC 187), wherein it was held that a person who had gone abroad even before the issue of the warrant of arrest cannot be said to be absconding or concealing himself with the intention to disrupt the execution of that warrant.



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8. Now, the petitioner has given an undertaking to join the proceedings after surrendering, which would only facilitate the ponderance of Court proceedings and help in expediting the proceedings of the trial for final adjudication. This Court is of the considered view that in the light of circumstances as discussed herein above, the petitioner deserves to be given an opportunity to surrender and join the proceedings before the trial Court as undertaken by him, i.e., within a period of 45 days from today.

9. Hence, the impugned order dated 22.12.2022 (Annexure P-16) is quashed subject to surrendering of the petitioner within 45 days from today.

10. It is further observed that in case any application for bail is moved by the petitioner, the same may be considered and decided by the Court in accordance with law on that very day itself.

11. There is no denial to the fact that due to petitioner's act, delay has occurred in trial proceedings and has caused prejudice to the other side and to compensate the delay caused by the petitioner alone, he is directed to deposit cost of 1,000 Canadian Dollars, before the Punjab and Haryana High Court Bar Clerks Association and a receipt of the same to be produced before the trial Court and only in that eventuality, application for bail be considered.

12. However, it is made clear that in case the petitioner does not abide by the aforesaid undertaking, the respondent/State shall be at liberty to move an appropriate application for revival of the instant petition.

13. The petition in the aforesaid terms is allowed.

(SANDEEP MOUDGIL)
JUDGE

August 14, 2024
Manpreet

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