

CRM-M-43076-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43076-2023 (O&M)

Date of decision 05.03.2024

MOHIT KUMAR

... Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Akashdeep Miglani, Advocate
for the petitioner.

Mr. Mohit Saroha, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in this petition under Section 482 Cr.P.C. is for quashing of the order dated 21.04.2023 (Annexure P-3) passed by the Trial Court whereby the petitioner has been declared a proclaimed offender in FIR No.71 dated 02.04.2022 (Annexure P-1) registered under Sections 452, 458, 323, 324, 325, 326, 506, 148 and 149 of the IPC at Police Station Jamalpur, District Ludhiana, Punjab.

2. The brief facts of the case are that one Inderpreet Singh got registered the aforementioned FIR against Surinder Pal Singh and 4-5 unknown persons. Pursuant to the arrest of Surinder Pal Singh, he disclosed the name of the present petitioner who was nominated as an accused on 11.08.2022. The petitioner sought the concession of anticipatory bail from the Court of Addl. Sessions Judge, Ludhiana which came to be declined on 17.04.2023 (Annexure P-2).

3. However, in the meantime, proceedings for declaring him a proclaimed offender were going on pursuant to which on 21.04.2023, he was declared proclaimed offender vide order dated 21.04.2023 (Annexure P-3).

4. It is this order which is under challenge in the present petition.

5. The learned counsel for the petitioner contends that initially he had not been named in the FIR but came to be nominated as an accused in the disclosure statement of the arrested accused. When the Investigating Agency sought to arrest him, he sought the concession of anticipatory bail which was declined by the Addl. Sessions Judge, Ludhiana vide order dated 17.04.2023 (Annexure P-2). However, later, he was declared a proclaimed offender on 21.04.2023, a fact of which he was unaware. Be that as it may, he approached this Court and was granted the concession of interim anticipatory bail on 02.05.2023 (Annexure P-4) pursuant to which he joined investigation. As he was availing his legal remedy of seeking anticipatory bail, he could not be said to be absconding and therefore, the impugned order was liable to be set aside.

6. A status report dated 05.03.2024 by way of an affidavit of Jasbinder Singh, PPS, Deputy Assistant Commissioner of Police, Industrial Area 'A' Ludhiana has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. While referring to the reply, he contends that the petitioner had rightly been

declared a proclaimed offender vide the impugned order and therefore, there was no merit in the present petition and the same was liable to be dismissed. He, however, concedes the factual position as narrated hereinabove.

6. I have heard the learned counsel for the parties.

7. When this matter had come up for hearing on 01.09.2023, the following order was passed:-

“The prayer in the petition under Section 482 Cr.PC is for quashing of the impugned order dated 21.04.2023 passed by the Trial Court whereby the petitioner was declared proclaimed offender in case FIR No.71 dated 02.04.2022 under Sections 452, 458, 323, 324, 325, 326, 506, 148 & 149 IPC registered at P.S. Jamalpur, District Ludhiana.

The Counsel for the Petitioner contends that he has been named in the disclosure statement of his co-accused and was therefore unaware of the proceedings pending against him. Subsequently, when the investigating agency sought to arrest him, he moved an application for grant of anticipatory bail which came to be dismissed by the Sessions Court vide order dated 17.04.2023. Thereafter unknown to him, he was declared a proclaimed offender on 21.04.2023. However, he approached this Court and was granted the interim anticipatory bail on 02.05.2023 pursuant to which he joined the investigation. He contends that as he was availing his legal remedy, being unaware of the order vide which he was declared a proclaimed offender he could not be said to be absconding and the impugned order was liable to be quashed.

Notice of motion.

On the asking of the Court, Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab accepts notice on behalf of the State.

List on 20.11.2023.

In the meantime, operation of the impugned order dated 21.04.2023 shall remain stayed.”

8. A perusal of the aforementioned order and the arguments raised by the learned counsel for the petitioner clearly establishes that the petitioner was availing his legal remedy of seeking anticipatory bail first before the Addl. Sessions Judge, Ludhiana and thereafter, before this Court when he was declared a proclaimed offender on 21.04.2023. A person who is availing his legal remedy before the Court of law cannot be said to be evading the process of law leading to him being declared a proclaimed offender. Therefore, there is considerable force in the argument of the petitioner that as he was before the Courts, the impugned order ought not to have been passed.

9. In view of the above, the present petition is allowed and the order dated 21.04.2023 (Annexure P-3) and all subsequent proceedings arising therefrom stand quashed.

(JASJIT SINGH BEDI)
JUDGE

05.03.2024
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No