

CRM-M-41744-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41744-2024
Reserved on: 05.09.2024
Pronounced on: 20.09.2024

Pardip Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kuldip Singh, Advocate
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
71	16.05.2003	Phillaur, District Jalandhar	406, 420, 120-B IPC

1. Challenging the order of proclamation on being declared as a proclaimed offender, the petitioner, a resident of the USA, has come up before this court under section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS].
2. Counsel appearing for the State has strenuously opposed this petition, including the limited relief as confined by the petitioner.
3. Vide impugned order dated 13th October 2006, passed by the Sub Divisional Judicial Magistrate, Phillaur, the petitioner was declared as a proclaimed offender.
4. The petitioner had filed a quashing petition in this Court, which was based on a compromise with the complainant. The said petition was registered as CRM-M-15875-2021 and on 17th August 2022, the Coordinate Bench of this Court had passed the following order:

“This petition was filed seeking quashing of FIR No.71 dated 16.05.2003 under Section 406, 420, 120-B IPC 1860 registered at P.S. Jalandhar and all other subsequent proceedings arising therefrom on the basis of compromise.

Learned State counsel filed status report wherein it is pleaded that the petitioner was declared as Proclaimed offender on 24.04.2024.

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In view of the status report filed, learned counsel for the petitioner seeks permission to withdraw the present petition with liberty to avail remedies in accordance with law.

Dismissed as withdrawn with liberty as prayed for.”

5. After that, the petitioner filed another quashing petition in this Court seeking the quashing of the proclamation order. The said petition was registered as CRM-M-47612-2023, and on 22nd September 2023, Coordinate Bench of this Court passed the following order:

“1. The present petition has been filed for quashing of impugned order dated 13th October 2006 in FIR No.71 dated 16th May 2003 under Sections 406, 420 and 120-B IPC 1860, registered at Police Station Phillaur, District Hoshiarpur.

2. Learned counsel for the petitioner seeks permission to withdraw the present petition with liberty to file afresh as soon as there is a confirm programme of the petitioner coming to India.

3. Dismissed as withdrawn with liberty as prayed for.

4. Since the main case has been dismissed as withdrawn, pending application if any is rendered infructuous.”

6. An analysis of the submissions and the petition would lead to the following outcome. It remains undisputed that when the petitioner got to know about his being declared a proclaimed offender, he took a legal remedy and came up before this Court. It also remains undisputed that it never happened that police officials caught him or tried to run away to avoid an appearance in Court. It also remains undisputed that the petitioner is a shopkeeper, and, as such, he would have a permanent place of business; despite this, the police could not serve him. In such a situation, the petitioner has proved his case by a preponderance of probabilities and has prima facie established that his non-appearance was beyond his control. Although there is a massive delay in proclamation proceedings, which have been pending for a decade, the petitioner on his own came before this Court, undertaking to attend the trial, and it is not the police who have been able to catch him.

7. The petitioner seeks to quash the proclamation order. This Court is inclined to adjudicate the proclamation order to let the petitioner establish his intention to appear. Once he has made an appearance, it shall be permissible for him to file a quashing petition.

8. The primary object of the service is to secure the accused's presence at trial. The petitioner approached this court independently, establishing the bonafide at this stage. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case, and also for the reasons mentioned above, the ends of justice would meet if the impugned proclamation order is quashed qua the petitioner. Thus, exercising the inherent

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powers under section 528 BNSS 2023, it would be appropriate to grant the following limited relief to the petitioner, subject to the compliance of the conditions mentioned in this order.

9. The State's counsel submitted that if this Court is granting any concession to the petitioner, it must be subject to some reprimand. The petitioner's counsel declared that if this court imposes reasonable and affordable costs, the petitioner shall deposit the same.

10. Given the above, the petitioner shall deposit rupees twenty-five thousand in the PGI Poor Patients Welfare fund by the next date.

11. The petitioner is directed to surrender before the concerned court **on or before 30.10.2024, 11 AM**. On or before this date, if the petitioner files bail application(s) before the concerned Court(s) of the concerned district, trial Court shall decide the same on priority.

12. There shall be a stay of the petitioner's arrest, Non-Bailable Warrants, and LOC, in the case mentioned above, from the date of passing of this order till 30.10.2024, to enable the petitioner to exercise their statutory rights of bail. As mentioned above, this stay is subject to the petitioner's surrender, failing which this protection shall also be recalled. It is clarified that if the petitioner appears before the concerned Court, all warrants issued by the concerned court against the petitioner in the abovementioned matter shall be recalled and canceled. It is clarified that if the petitioner fails to appear before the concerned court within the time limit mentioned in this order, then this order shall be recalled automatically under section 403 read with 528 of BNSS, 2023, without any further reference to this court.

13. This order is subject to the condition that during the petitioner's stay in India, he shall not transfer any immovable property or share in it, or its possession, in any manner, including by entering into any agreement, executing any conveyance deed, agreement or power of attorney, mortgage, transfer, etc., in any manner. This order shall remain in operation till the date of the petitioner's surrender before the concerned Court.

14. It is clarified that this order shall not be construed as an order of bail for which liberty is reserved to file before the appropriate Court if the need arises.

15. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

16. *A certified copy of this order would not be needed, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the concerned court/ officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

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Petition is partly allowed to the extent mentioned above. All pending applications, if any, stand disposed of. Liberty reserved to raise the given-up relief(s) in the subsequent petition(s) if the need arises.

(ANOOP CHITKARA)
JUDGE

20.09.2024
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Whether speaking/reasoned: Yes
Whether reportable: NO.