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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51339-2022 (O&M)
Date of decision: 27.05.2024

SUMIT MANGAL @ KAKA BHAIYA . . . PETITIONER

V/s

STATE OF PUNJAB . . . RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

Mr. S. K. Bokolia, Advocate
for the respondent-complainant.

SUMEET GOEL, J.

1. This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of order dated 27.10.2022 (Annexure P-12) passed by Additional Chief Judicial Magistrate, Faridkot vide which the petitioner has been declared as proclaimed offender in FIR No.229 dated 06.10.2021 registered at Police Station City Kotkapura, District Faridkot, Punjab under Sections 376/506 of IPC.

2. Challenge in the present petition is laid to the order dated 27.10.2022 passed by the learned Additional Chief Judicial Magistrate, Faridkot in the above-mentioned FIR case, whereby the petitioner has been declared as proclaimed person, due to his non-appearance in the case.

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3. In the present petition, petitioner has sought two-fold relief; Firstly, quashing of above-mentioned order dated 27.10.2022 passed by the learned Additional Chief Judicial Magistrate; Secondly, in the alternative direction from this Court has been sought to be issued to the learned trial Court to admit the petitioner on bail.

4. The present petition contains lengthy and voluminous pleadings annexures, touching and commenting on the merits of the allegations and evidence led on behalf of the complainant. With all vehemence, detailed arguments regarding the merits of the case of the prosecution have been made on behalf of the counsel for the petitioner to contend that the case of the prosecution lacks merit and no case as alleged in the FIR against the petitioner is made out.

5. At the outset, I find that the arguments made on behalf of the petitioner touching upon the merits of the allegations and evidence led in the case on behalf of the prosecution, are wholly misconceived. It is trite law that the petitioner under the garb of the present petition, wherein, the FIR as well as the final report presented against the petitioner in the said FIR are not subject matter of challenge, the arguments impugning the same are clearly not sustainable in law. The petitioner by astuteness in pleadings cannot be permitted to convert the present proceedings into a mini trial. As such, this Court refrains itself from treading into the aspect of evaluation and adjudication of the merits and demerits of respective parties to the above-mentioned FIR case, lest it would prejudice any of them.

6. As such, shorn of unnecessary details the facts relevant to the adjudication qua sustainability of the order dated 27.10.2022, whereby the petitioner was declared proclaimed person, are that the above-mentioned FIR was lodged against the petitioner on 06.10.2021. Thereafter, the petitioner filed an application for grant of anticipatory bail

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in the FIR lodged against him, in the Court of learned Additional Sessions, Judge, Faridkot. The said anticipatory bail application of the petitioner was dismissed on 08.11.2021. Thereafter, the petitioner applied for grant of anticipatory bail before this Court by filing petition bearing No. CRM-M-32041-2022. However, the said anticipatory bail petition filed by the petitioner was dismissed by this Court vide order dated 30.11.2022.

7. It seems that in the meanwhile on account of non-appearance of the accused in the case, the learned Additional Chief Judicial Magistrate, Faridkot issued proclamation against the accused. The accused through his counsel filed an application dated 19.10.2022 before the learned Additional Chief Judicial Magistrate, Faridkot seeking recall of the proclamation issued against him. The learned Additional Chief Judicial Magistrate, Faridkot vide order dated 27.10.2022 dismissed the application filed by the petitioner seeking recall of the proclamation issued against him. Further, vide said order the petitioner was declared as proclaimed person and proceedings under Section 83 of the Code of Criminal Procedure were ordered to be initiated against the petitioner. Hence the present petition under Section 482 has been filed by the petitioner before this Court.

8. It is submitted on behalf of the petitioner that the order dated 27.10.2022 passed by the learned Additional Chief Judicial Magistrate, Faridkot is perverse. It is submitted that the police with the permission of Court conducted enquiry in the case and the petitioner was found to be innocent. It is submitted that the petitioner presented himself before the police in the said enquiry, as such he was not absconding in the case. It is further submitted that the petitioner by dint of his filing application dated 19.10.2022 seeking recall of the proclamation is deemed to have submitted to the jurisdiction of the Court, as such he

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cannot be declared proclaimed person. It is submitted that the petitioner is not running away from the proceedings, in case the petitioner is protected by this Court he is ready to undergo the Narco Test.

9. Per contra the learned State counsel while referring to the status report filed vide affidavit of Deputy Superintendent of Police, Kotkapura has submitted that the law was set in motion by complainant with the allegations that her daughter who is unintelligent and is suffering speech impairment, was sexually assaulted by the petitioner. Accordingly, present FIR was registered and investigation ensued. In order to apprehend the petitioner, police made earnest efforts and conducted raids at his possible hideouts. In the course of investigation statement of victim was got recorded under Section 164 of the Cr.P.C. The Senior Superintendent of Police, Faridkot in order to carry out impartial and effective investigation in this case, instituted a high-ranking SIT vide letter No.15588-92/C dated 30.10.2021. The mental I.Q. level test of victim was got conducted at GGS Medical College Faridkot and her I.Q. was found to be 73 (Borderline). Raids were conducted by police at various places to apprehend the petitioner. His arrest warrants were obtained in the case and a lookout circular of petitioner was also applied for on 11.01.2022. Upon initial culmination of investigation, final report under Section 173 of the Code of Criminal Procedure was filed against the petitioner in Court on 03.12.2021. It is submitted that on being satisfied that the petitioner could not be arrested in an ordinary manner, learned Additional Chief Judicial Magistrate, Faridkot vide order dated 01.09.2022 issued a written proclamation for 27.10.2022 requiring the petitioner to appear in Court. The publication was affected on 17.09.2022, but due to non-appearance of the petitioner he was declared proclaimed person vide order dated 27.10.2022. A supplementary challan under Section 173(8) of the Cr.P.C. was filed against the co-

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accused of the petitioner on 16.09.2022. Charges were framed against the accused for commission of offences under Section 120-B/109/506/201/176/34 IPC vide order dated 17.11.2022. The prosecution had already examined 5 witnesses when the matter was next fixed for 13.05.2024 for remaining evidence of the prosecution. It is submitted that there are serious allegations of penetrative rape against the petitioner. As such the dismissal of the present petition was prayed for.

10. The argument on behalf of the petitioner that the order dated 27.10.2022 passed by the learned Additional Chief Judicial Magistrate, Faridkot being perverse is wholly misconceived. The order passed by the Court can be termed to be perverse if it is passed without consideration of relevant material or upon consideration of irrelevant material, the consideration or non-consideration, whereof shall have bearing on the finding recorded. The finding can also be considered perverse, if a person duly instructed in law will not come to that finding. The facts of the present case clearly depict that the order dated 27.10.2022, declaring the petitioner as proclaimed person does not suffer from any vice of perversity, as far as the compliance of procedural aspect of Section 82 of the Code of Criminal Procedure are concerned. The requirements of procedure prescribed under Section 82 of the Cr.P.C. have been meticulously complied with by the learned Magistrate before passing the order dated 27.10.2022. Written proclamation was issued against the petitioner on 01.09.2022 for 27.10.2022 requiring the petitioner to appear in the Court. Proclamation was affected on 17.09.2022 and the petitioner was declared as proclaimed person due to his non-appearance in the case on 27.10.2022. It is not the case of the petitioner before this Court that the publication of proclamation suffered from any procedural infirmity.

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11. The argument made on behalf of the petitioner, that the police with the permission of Court conducted enquiry in the FIR case and the petitioner was found to be innocent, as well as the argument raised regarding the participation of petitioner before the police in the said enquiry, are of no help to the petitioner. The record of the case shows that no such enquiry as alleged by the petitioner, was conducted by the police in the present FIR case. The effort made on part of petitioner to jumble up the issue in this regard is to be deprecated. Perusal of record shows that the enquiry report of police appended as (Annexure P-6) to the petition does not pertain to the present FIR case. No permission from the Court was sought in the present FIR case by the police before initiating any such enquiry. The said enquiry apparently was conducted in FIR No.248 dated 01.11.2021 under Section 212 of the IPC, registered at Police Station Kotkapura, Faridkot by Deputy Superintendent of Police, Sub-Division Malout, District Muktsar Sahib. In the concluding lines of said report it is held that since the matter in present FIR is already pending adjudication, wherein challan has already been presented against the accused persons, therefore it would be appropriate to leave the matter to be adjudicated by the Court. In view of these findings the matter enquiry file was ordered to be consigned to record room.

12. Though perusal of the above enquiry report of the police shows that the police has joined the subject matter of the present FIR in the said enquiry also, but the subject matter of the present FIR not being directly amenable to the power of police in said enquiry pertaining to another FIR, the police ought to have refrained itself from commenting upon anything with regard to the present FIR. The findings given by police in said enquiry report by evaluating the merits of the present case, totally exonerating the petitioner from the allegations in present case are wholly without jurisdiction. The police cannot assume itself the powers in

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collateral enquiry, to comment upon the merits of allegations by exonerating the accused, in altogether separate trial proceedings pending in a Court of law, especially when the said trial itself was proceeding on the basis of challan presented against the accused by police, after thorough investigation of case. The enquiry proceedings (Annexure P-6) are clearly an attempt on part of the police to over reach the authority of the majesty of the Court. The said conduct of the police is apparently in violation of the judgment passed by this Court in case titled ***Pankaj Kumar @ Pinki and Others versus State of Punjab & Another, 2021(2) RCR Criminal 633*** wherein it was held as under:

“54. Resultantly, the instructions dated 04.05.2017 (Annexure R-2) attached in CRM-M-19681-2020, are hereby quashed and further, this Court deems it necessary to issue following directions:-

(a) In every case, where FIR has been registered regarding commission of a cognizable offence, the investigation shall be conducted by the Investigating Officer, strictly in accordance with the provisions of Code of Criminal Procedure, 1973.

(b) In every case, where after registration of FIR, investigation has commenced, no representation/request on behalf of accused to examine his/her innocence shall be entertained by police and no parallel inquiry shall be initiated.

(c) In cases, where upon the registration of FIR and commencement of investigation, the State Government or the State Police orders transfer of investigation, then it shall be necessary to intimate the magistrate, before whom the special report under Section 157 (1) Cr.P.C, 1973 was originally submitted. The intimation shall be given in writing with reasons for transfer of investigation.

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(d) Whenever, the investigating officer after commencement of investigation, decides to hold or stop the investigation in respect of all or any of the accused persons, for any reason, it shall be mandatory for such officer to send the report under Section 157(2) Cr.P.C, 1973 to the magistrate before whom report under Section 157(1) Cr.P.C, 1973 was initially submitted.

(e) If, the trial Court upon conclusion of trial finds that the acquittal of the accused is on account of deliberate lapses in investigation, it can pass appropriate orders for suitable departmental/penal action against the officers responsible for such lapses.

(f) The State Governments of Punjab, Haryana and U.T. administration, Chandigarh shall ensure that the police officers and public prosecutors are properly sensitized about their responsibilities and duties and to further strictly adhere to the statutory provisions of law in respect of the investigation in crime.

(g) The State Governments of Punjab, Haryana and U.T. Administration, Chandigarh shall further ensure strict compliance of the directions issued by Hon'ble Supreme Court in "State of Gujarat v. Kishan Bhai and others", 2014 (5) SCC 108."

13. However, since no further action in the said enquiry report of the police dated 25.04.2022 has been contemplated and it was ordered to be consigned to record, this Court as a matter of sheer self-restraint refrains itself from any further action in that regard. In view of the above-mentioned facts and circumstances the enquiry proceedings appearing to be being farce, the petitioner cannot derive any benefit therefrom, on the plea that he was present before the investigating agency prior to being declared proclaimed person vide order dated 27.10.2022. Moreover, the petitioner was required to join the investigation in the present case, which he clearly failed to do.

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14. The argument on behalf of the petitioner that by dint of his filing application dated 19.10.2022 seeking recall of the proclamation, he is deemed to have submitted to the jurisdiction of the Court, as such he cannot be declared proclaimed person is ill conceived. The requirement of provisions of Section 82 having been invoked subsequent to the issuance of warrant of arrest of the accused, the meticulous compliance thereof can be made by petitioner personally presenting himself before the Court. It is pertinent to mention that the petitioner applied for grant of anticipatory bail before the learned Additional Sessions Judge as well as before this Court. However, his prayer for grant of anticipatory bail having been dismissed on both the occasions, he cannot be permitted to evade his arrest in the case, under the garb of filing the application seeking recall of proclamation, without even submitting himself to the custody in the matter.

15. The next submission made on behalf of the petitioner that he is not running away from the proceedings, in case the petitioner is protected by this court he is ready to undergo the Narco Test is again without any substance. The anticipatory bail petition of the petitioner in the present case, having already been dismissed by a Co-ordinate Bench of this Court, the petitioner cannot derive any protection from his arrest in the present proceedings under Section 482 of the Code of Criminal Procedure.

16. The reliance on behalf of the petitioner has been placed on the following judgments in support of his case to contend that the petitioner is ought to be protected in order to enable to present himself before the Learned Trial Court.

1. Raj Jit Singh Hundal versus Central Bureau of Investigation, Law Finder Doc Id. # 2270514;

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2. Rahul Dureja and another versus State of Punjab, Law Finder Doc Id. # 1941120;
3. Gurbir Singh Mundi versus State of Punjab and another, Law Finder Doc Id. # 1939340;
4. Rohit Kumar @ Raju versus State of NCT Delhi, Law Finder Doc Id. # 133687;
5. Sukhjinder Singh versus State of Punjab and another, Law Finder Doc Id. # 2488737;
6. Harvinder Singh versus State of Haryana and another, # 1761584;
7. Rishi Kapoor versus State of Haryana and another, judgment dated 10.05.2023, passed in case by this Court, in case bearing No. CRM-M 10913 of 2022.

17. I have gone through all the judgments cited on behalf of the petitioner and find that none of the said judgments is of any help to the case of the petitioner. The fact situation in none of the said cases is identical to the facts of the case of the petitioner. In case of **Raj Jit Singh Hundal** (supra) the petitioner was not yet declared proclaimed offender in the case, and a Division Bench of this Court granted him liberty to avail his remedy of anticipatory bail, prior to being declared as P.O. In cases of Rahul Dureja; Gurbir Singh Mundi; Sukhjinder Singh; Harvinder Singh; and Rishi Kapoor (supra) proclamation proceedings were quashed having been held in non-compliance of mandatory provisions of Section 82 of the Cr.P.C., however, in the present case no such non-compliance of any aspect of Section 82 of the Cr.P.C. is substantiated either in the pleadings of the petitioner or in the arguments; In case of **Rohit Kumar @ Raju** (surpra) it was held that the Court issuing proclamation must record its satisfaction that the accused had absconded or concealed himself. In the said case it was further held that the period between the date of passing

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of proclamation and the date fixed for appearance in the Court being less than 30 days the proclamation is liable to be set aside. In the present case the proclamation was made by the Court vide order dated 01.09.2022. The said order is neither under challenge in the present case, nor has been made part of record of the present case by the petitioner. The only impugned order in this petition is the order whereby the petitioner was declared proclaimed person. Moreover, the publication in the present case was effected on 17.09.2022 with the date fixed for appearance of petitioner being 27.10.2022. As such there was a clear gap of more than 30 days in the publication and date fixed for appearance in the Court.

18. In view of my foregoing findings no illegality, perversity or fault can be found with the impugned order dated 27.10.2022 passed by the Court of the learned Additional Chief Judicial Magistrate, Faridkot and as such the same is upheld. Resultantly, present petition under Section 482 of the Code of Criminal Procedure is dismissed being devoid of any merit.

19. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

May 27, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No