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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49487-2024
Date of Decision: 03.10.2024

Gurpreet Singh Vit Shah ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Anosh Samson, Advocate
for the petitioner.

Ms. Swati Batra, D.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
185	24.07.2022	Civil Lines Batala, District Batala	186, 353 IPC and 25, 27 of Arms Act

1. Challenging the order dated 25.05.2023 of proclamation on being declared as proclaimed offender, the petitioner has come up before this court under section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS].
2. Notice served upon the official respondent through State counsel. The nature of order which this Court proposes to pass, there is no necessity of calling any response from the State.
3. Perusal of Annexure P-2 i.e. ticket annexed with the petition clearly points out that the petitioner had gone to Dubai prior to the date of registration of FIR and he was not aware about the proceedings of the Court.
4. 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 he being declared proclaimed offender, he took legal remedy and came up before this Court. It also remains undisputed that it never happened that police officials caught him or he tried to



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run away to avoid an appearance in Court. 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. The petitioner within a short span on his own came before this Court, undertaking to attend the trial, and it is not the police who have been able to arrest.

5. Let the petitioner attend the trial because the criminal justice system must not hamper and suffer because of the petitioner.

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

7. Be that as it may, the primary reason to quash the proclamation orders was the petitioner was not in India despite affixations being made in their Indian address.

8. Another reason to quash the proclamation is the statutory provision of Section 105 CrPC. It shall be relevant to extract Section 105 of CrPC, 1973, which reads as follows:

105. Reciprocal arrangements regarding processes. —

(1) Where a Court in the territories to which this Code extends (hereafter in this section referred to as the said territories) desires that—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant, issued by it shall be served or executed at any place,—

(i) within the local jurisdiction of a Court in any State or area in India outside the said territories,

it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 68 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories;

(ii) in any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters (hereafter in this section referred to as the contracting State), it may send such



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summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and send to such authority for transmission, as the Central Government may, by notification, specify in this behalf.]

(2) Where a Court in the said territories has received for service or execution—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant, issued by—

(I) a Court in any State or area in India outside the said territories;

(II) a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed] as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

(i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by sections 80 and 81,

(ii) a search-warrant has been executed, the things found in the search shall, so far as possible, be dealt with in accordance with the procedure prescribed by section 101:

[Provided that in a case where a summons or search-warrant received from a contracting State has been executed, the documents or things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through such authority as the Central Government may, by notification, specify in this behalf.

9. Thus, there is nothing to demonstrate that the State had either complied with the statutory provisions of Section 105 CrPC or were not required to comply with such provisions.

10. A perusal of the said statement reveals that the prosecution is complying with the provisions of Section 82 & 105 CrPC. Section 82 CrPC provides that affixation must be made where the petitioner resides. Given above, the proclamation was not affixed in terms of section 82 (2) (i) (a) & (b) of CrPC, which mandate that the proclamation shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; and it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village. None of these conditions were complied with, and the non-adherence to the procedure has rendered the proclamation illegal.

11. Given above, the petitioner shall deposit Rs.10,000/- in the PGI Poor Patients Welfare fund and hand over the receipt of deposit to trial Court by the next date.

12. The petitioner is directed to surrender before the concerned court **on or before 18.10.2024, 11 AM**. On or before this date, if the petitioner files bail application(s), the concerned trial court to grant bail to the petitioner on surrendering before the concerned



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Court subject to furnishing bail bonds by imposing reasonable conditions deemed appropriate in the background of the accused's conduct. The petitioner is directed to appear on each date before the trial court and not to delay it.

13. There shall be a stay of the petitioner's arrest in the case mentioned till 18.10.2024 5.00 P.M. This stay is subject to the petitioner's surrender, failing which this protection shall also be recalled. It is clarified that if the petitioner appear before the concerned court, then all warrants issued by the concerned court against the petitioner in the matter mentioned above shall automatically stand recalled and canceled.

14. 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 528 r/w 403 of BNSS, 2023, without any further reference to this court.

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.*

Petition is partly allowed to the extent mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

03.10.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: NO.