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2024:PHHC:137286



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

**CRM-M-52016-2024
DECIDED ON: 21.10.2024**

JORA SINGH GILL

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Puneet Kumar Bansal, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 528 of BNSS, 2023 seeking setting aside the order dated 23.12.2021 (Annexure P-8), whereby the petitioner was declared as proclaimed person despite the fact that the petitioner was never served before being declared as proclaimed person in FIR No.90, dated 04.07.2018, under Sections 324, 323, 506, 148, 149 IPC (Sections 325, 326 IPC added later on) and Sections 25, 27 of Arms Act, 1959, registered at Police Station Ghall Khurd, District Ferozepur.

2. Learned counsel for the petitioner contends that the petitioner was granted the concession of anticipatory bail by the Court of Additional Sessions Judge, Ferozepur on 16.10.2018 (Annexure P-2) and thereafter, talks of settlement were going on between the parties i.e. the petitioner and the complainant as has been pleaded before this Court and on that surmises he went abroad.

3. It has been further asserted that the factum of the petitioner living in abroad was very well within the knowledge of the complainant-respondent but he was pursuing the case before the trial Court without informing the fact that the petitioner has left India and he was never served in the proceeding either throughailable or non-ailable warrants at any stage. It is in the light of these facts, he would submit that when he came back to India in the month of September, 2024 for the sole purpose of joining the trial proceedings, he came to know about the order dated 23.12.2021 (Annexure P-8) vide which he was declared proclaimed person.

4. The record before this Court as has been referred to by the petitioner would indicate that proclamation was issued against him on 07.10.2021 (Annexure P-3) and the case was fixed for 11.11.2021. The proclamation was actually effected on 10.11.2021 as is evident from Annexure P-4) and thereafter without expiry of 30 days period as stipulated under Section 82 Cr.P.C., the matter was accordingly adjourned to 18.11.2021 and thereafter again on 25.11.2021 and finally on 23.12.2021, the petitioner was declared as proclaimed person. However, the petitioner showing bona fide immediately approach the trial Court while moving an application seeking anticipatory bail but the same has also been dismissed on 03.10.2024 which necessitated him to approach this Court vide instant petition.

5. Notice of motion.

6. On the asking of the Court, Mr. Jaspal Singh Guru, AAG, Punjab accepts notice on behalf of the respondent-State and submits that it was incumbent upon the petitioner, while leaving the country and going

abroad, to inform the trial Court about the change of address as he was very well aware of the pendency of prosecution against him in the said FIR.

7. The aforesaid arguments raised on behalf of the State may not carry weight as at the time when the petitioner left the country, talks about settling the matter amicably between the parties i.e. the petitioner and respondent No.2-complainant were going on and by that time investigation in the FIR has not yet completed, therefore, the question of appearing before the trial Court does not arise and providing information qua the change of address was also not in picture by any stretch of imagination.

8. Looking into the factual aspects as narrated hereinabove which is peculiar in nature and when this Court sought for any other objection from the State counsel, he very fairly submits that in case the petitioner joins the trial proceedings and facilitates the prosecution to move further in the trial Court, there won't be any objection for quashing of that order.

9. At this stage, learned counsel for the petitioner undertakes that the petitioner will surrender before the trial Court positively by tomorrow i.e. on 22.10.2024 at 10:00 a.m.

10. In case, the petitioner surrenders as undertaken before this Court, the trial Court shall consider his application for bail afresh, which may be disposed of on the same very date and decided in accordance with law.

11. However, the petitioner is liable to compensate the judicial process which has been delayed due to his absence who has left the country despite the condition in place against him after he was enlarged on bail by the Court below and for that, this Court quantifies Rs.25,000/- to be justified

costs, which shall be deposited by today itself with the Chandi Kusht Ashram Society, Industrial Area, Phase-2, Ram Darbar, Chandigarh (A/c No.1445265900, IFSC Code: KKBK0004211) and a receipt of the same be produced before the Trial Court and only in that eventuality, application of the petitioner for seeking bail be considered.

The petitioner is at liberty to deposit the necessary cost by way of online mode.

The present petition is disposed of in the aforesaid terms.

21.10.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No