



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

124

CRM-M-53169-2024 (O&M)
Date of Decision: 24.10.2024

PAWAN KUMAR

....Petitioner

VERSUS

STATE OF PUNJAB AND ANR

....Respondents

CORAM : HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Brijeshwar Vashist, Advocate for the petitioner.

Mr. Amandeep Singh Samra, AAG, Punjab..

MANISHA BATRA, J. (Oral)

The instant petition has been filed by the petitioner seeking quashing of FIR No.84 dated 23.05.2002 registered at Police Station Bholath, District Kapurthala under Sectiond 324 read with Section 34 of IPC and the proceedings having emanated therefrom on the basis of a compromise alleged to have been arrived at between him and respondent no.2 and has simultaneously sought quashing of order dated 27.10.2003 passed in the same case whereby he was declared a proclaimed offender by the learned trial Magistrate. However, at the time of addressing arguments, learned counsel has restricted the relief claimed by the petitioner only to the extent to which quashing of order dated 27.10.2003 is sought.

2. It is argued by learned counsel for the petitioner that order dated 27.10.2003 had been passed by the learned trial Magistrate without



considering the fact that no proper satisfaction which is an essential condition for initiation of proceedings under Section 82 of Cr.P.C had been recorded by learned trial Magistrate and the fact that he had been living abroad at the time of issuance of proclamation was not taken into consideration. It is, therefore, argued that the impugned order is liable to be set aside.

3. Learned State counsel who has advance notice of the petition has submitted on the other hand that the petitioner was a bail jumper. The impugned order had been passed by complying with the provisions of Section 82 Cr.P.C and did not warrant any interference. Therefore, he has submitted that the petition is liable to be dismissed.

4. I have heard learned counsel for the petitioner and learned State counsel at considerable length and have gone through the record.

5. As per Section 82 of Cr.P.C., if the Court has any reason to believe that any person against whom warrants have been issued for having been absconded or is concealing himself so that warrant could not be executed, it may publish a written publication against him. The Court must be *prima facie* satisfied that the person has absconded or is concealing himself so that the warrants of arrest issued previously cannot be executed despite reasonable diligence. However, in this case a perusal of Annexure P-5 which is copy of order dated 13.09.2003 reveals that the Court by simply observing that the accused could not be summoned through non-bailable warrants, ordered to summon him by issuing



proclamation under Section 82 of Cr.P.C for 27.10.2003 without recording any satisfaction that there were chances of his apprehension despite the exercise of due diligence or that he had absconded or was concealing himself so as to avoid execution of warrants. Since the compliance of this mandatory provision had not been proved to be made by the learned trial Magistrate, therefore, the proclamation could not be stated to have been issued by complying with the provision of Section 82 of Cr.P.C. That apart, the petitioner was living in Canada at the relevant time when the proclamation was issued. As such, it was incumbent upon the learned trial Court to initiate proceedings under Section 105 of Cr.P.C which too had not been done. In such circumstances, I am inclined to hold that the impugned order dated 27.10.2003 whereby the petitioner was declared a proclaimed offender is not sustainable and is liable to be set aside. The same is accordingly set aside. The petition is partly allowed.

6. The petitioner is directed to surrender before the learned trial Magistrate within a period of six weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 482 of Cr.P.C. In the absence of any order for grant of anticipatory bail and on such surrender, he shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by concerned Court in accordance with law.

7. Needless to observe that in case, any application is filed before the concerned Court for grant of regular bail, then the concerned



Court shall be bound to dispose of the same expeditiously within a period of four days. Till the appearance of the petitioner before the learned trial Court, his arrest shall remain stayed.

8. It is, however, simultaneously made clear that in case the petitioner fails to appear before the learned trial Court within a period of six weeks from today, then the petition shall be deemed to be dismissed in toto.

24.10.2024

Deepak Patwal

(MANISHA BATRA)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No