



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

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CRM-M-54312-2024

DATE OF DECISION: 29.10.2024

AMARJIT KAUR JOHAL**...PETITIONER**

Versus

STATE OF PUNJAB**... RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Tarun Sharma, Advocate for the petitioner(s).

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

This petition has been filed under Section 528 The Bharatiya Nagarik Suraksha Sanhita, 2023 for setting aside the impugned order dated 11.05.2023 (Annexure P-5) passed by JMIC Zira whereby, the petitioner has been declared as proclaimed offender in case registered vide FIR No. 131 dated 21/12/2021 u/s 306 Indian Penal Code 1860, Police Station Zira, District Ferozepur (Annexure P-1).

2. Learned counsel for the petitioner submits that the petitioner was in abroad at the time of registration of the FIR and the entire proclamation proceedings took place in her absence in India. He further submits that the petitioner came to India last on 12.02.2019 and went back on 02.03.2019, wherein the present FIR was registered on 21.12.2021. He contends that a perusal of the proclamation notice prima facie shows that the said notice was issued to Karnail Kaur @ Kailo wife

of Ajit Singh, wherein the original name of petitioner is Amarjit Kaur



Johal, hence the entire proceedings against the petitioner is bad in the eyes of law.

3. Learned counsel appearing for the petitioner further asserts that even otherwise also this order is liable to be set aside, as the absence of the petitioner was neither intentional nor deliberate as prior to the registration of the FIR as well as complaint, she was not residing in India. The present FIR came to be registered on 21.12.2021 whereas during this time petitioner was already in abroad and had no knowledge about the proceedings initiated against her. Further, counsel for the petitioner undertakes that the petitioner will surrender before the trial Court and shall join the trial proceedings without any delay or default in future.

4. Notice of motion.

5. On the asking of the Court, learned State Counsel accepts notice on behalf of the respondent-State and has submitted that the petitioner despite the proclamation had failed to appear before the trial Court and has rightly been declared proclaimed person, and in addition the petitioner is evading the process of court which is highly deprecated on her part. He also asserts that non-complying with the orders of the court shows that she has no respect for the courts' order and a person who obstructs the process of law and evades from it does not deserves any concession. However, he is not averse to the undertaking given by the petitioner that he will surrender before the trial Court.

6. Heard respective counsels for the parties.

7. According to the averments, the petitioner was in abroad at the time of registration of the FIR. According to Section 82 of the



Criminal Procedure Code, a proclamation may be issued against an individual by the Court if it is reasonably believed that the person for whom a warrant has been issued has absconded or is hiding, making it impossible for the warrant to be carried out.

8. A person cannot be said to be “abscond” or “evade” the execution of warrant when he had gone to a distant place before the issue of the warrant. Dependence can be made on the judicial dictum rendered in the case of “**M.S.R. Gundappa v. State of Karnataka**” (1977 Cr LJ NOC 187), wherein it was held that a person who had gone abroad even before the issue of the warrant of arrest cannot be said to be absconding or concealing himself with the intention to disrupt the execution of that warrant.

9. Reliance can also be placed upon the judgment of this Court rendered in CRM-M-1513-2009 tiled as “**Mehar Singh And Anr. vs State of Punjab**” wherein it was held as under:

“In the present case, since the petitioners were already residing in Canada before the registration of FIR in question i.e. since the year 1997, there was no occasion for them to conceal themselves or abscond. A perusal of order dated 7-10-2008 (Annexure P-10) and order dated 21-12-2007 (Annexure P-4) does not reveal that the petitioners were ever attempted to be served in Canada especially when there was no material on record that the petitioners had left the country after the registration of FIR in question with a view to abscond or conceal themselves. Rather in the inquiries conducted by the police, the petitioners were found to be innocent because the alleged papers in question were prepared in Canada. Thus, the petitioners were declared proclaimed offenders in violation of Section 82, Criminal Procedure Code. Accordingly, the impugned order dated



7-10-2008 (Annexure P-10), whereby the petitioners were declared proclaimed offenders, is set aside.”

10. From the perusal of the case file as well from the support of the documents it can be inferred that the petitioner was in abroad at the time of registration of the FIR, therefore, there was no occasion for her to evade the process of law intentionally, as she was never served in accordance with law. Thus the proclamation order dated 11.05.2023 (Annexure P-5) is in gross violation of Section 82 Cr.P.C.

11. Therefore in light of the afore-said judicial pronouncements and discussions made hereinabove, this Court is of the firm view that the impugned order dated 11.05.2023 (Annexure P-5), vide which the petitioner has been declared proclaimed person, is bad in law and not sustainable. Hence, the same deserves to be set aside and in view of the submissions made by learned counsel and also in appreciation of the fact that it will only speed up the proceedings before the Trial Court which is one of the essence as enshrined under Article 21 of the Constitution of India, the petitioner is directed to surrender before the trial Court within a period of one month from the date of receipt of certified copy of this order and apply for regular bail.

12. In case, such an application for bail is moved by the petitioner before the learned trial Court, the same shall be considered on the same date and decided in accordance with law.

13. However, it is made clear that in case the petitioner does not abide by the aforesaid undertaking, the respondent/State shall be at liberty to move an appropriate application for revival of the instant petition.

]14. Consequenlty, the petition is allowed in the above terms
and the impugned order dated 11.05.2023 (Annexure P-5) is set aside.

(SANDEEP MOUDGIL)
JUDGE

29.10.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>