

CRM-M-56611-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56611-2024
Date of Decision: 18.11.2024

Tarsem Lal @ Kaka ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ravi Malhotra, Advocate
for the petitioner.

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
23	13.03.2012	City Hoshiarpur, District Hoshiarpur	323, 324, 148, 149 IPC (Section 326 IPC added later on)

1. Challenging the order dated 20.04.2022 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. State counsel has referred to earlier petition filed by the petitioner i.e. CRM-M No.27875 of 2022 which was dismissed as withdrawn vide order dated 06.07.2022, however since the trial cannot await and ultimately the accused has to be brought before justice, this Court is not taking any adverse inference.
3. Counsel for the petitioner submits that the petitioner was released on regular bail vide order dated 19.12.2019 passed by Addl. Sessions Judge, Hoshiarpur. Petitioner was appearing regularly but during pandemic, due to mis-communication, he absented from the trial Court and was declared as proclaimed offender. He further submits that he is now ready to appear before the trial Court. He raised certain points of merit also.

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 tried to 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 their 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. The State's counsel submitted that if this Court is granting any concession to the petitioner, it must be subject to some reprimand. The petitioner's counsel declared that if this court imposes reasonable and affordable costs, the petitioner shall deposit the same.

8. 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.

9. The petitioner is directed to surrender before the concerned court **on 26.11.2024, 11.00 AM**. On this date, if the petitioner files bail application(s), the concerned trial court to grant bail to the petitioner on surrendering before the concerned Court as he was on bail earlier 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.

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10. There shall be a stay of the petitioner's arrest in the case mentioned till 26.11.2024 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.

11. It is clarified that if the petitioner fail to appear before the concerned court within the time limit mentioned in this order, then this order shall be recalled automatically under section 528 of BNSS, 2023, without any further reference to this court.

12. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

13. *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. Liberty reserved to the petitioner to challenge the FIR, if any registered pursuant to the order under challenge. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

18.11.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: NO.