

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

CRM-M-63398-2023 (O&M)

Date of Decision: 29.01.2024

2024: PHHC: 011762

RAJESH KUMAR

. . . . Petitioner

Vs.

STATE OF PUNJAB

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Ashutosh Gupta, Advocate, for the petitioner.

Mr. Anmol Singh Sandhu, AAG, Punjab.

DEEPAK GUPTA, J.

CRM-M-3694-2024

This is an application moved by the applicant/petitioner to place on record copy of an order dated 03.12.2018 passed by Id. ACJM, Patiala, as Annexure P16.

Application is allowed. Annexure P16 is taken on record.

CRM-M-63398-2023

By way of this petition filed under Section 482 CrPC, petitioner has prayed for quashing of order dated 10.07.2019 (Annexure P3) and order dated 12.08.2021 (Annexure P12) passed by Id. JMIC, Patiala, whereby petitioner was declared proclaimed person and all the subsequent proceedings arising therefrom, in trial relating to FIR No.190 dated 30.09.2014 under Section 61 of the Punjab Excise Act, 1914 registered at Police Station Sadar Patiala, District Patiala.

2. This is the second petition for this purpose. The earlier petition was dismissed as withdrawn with liberty to file fresh petition with better

particulars vide order dated 18.05.2023 of this Court passed in CRM-M-23676-2023.

3. Contention of Id. counsel is that after grant of bail to the petitioner on 03.12.2018, he could not appear before the trial Court concerned; that his bail was cancelled and he was declared proclaimed person, without making compliance of Section 82 CrPC.

4. Perusal of the paper-book reveals that vide order dated 03.12.2018 (Annexure P16), petitioner was released on bail, on furnishing of his personal bonds with direction to produce the surety on the next date of hearing. Matter was adjourned to 25.01.2019 for consideration of charges. However, the petitioner did not appear thereafter. Notice was directed to be sent to the petitioner as per order dated 09.05.2019 and as he did not turn up, warrant of arrest were directed to be issued. Warrant of arrest were issued several times, but failed to procure the presence of the petitioner. Ultimately, vide an order dated 12.03.2020, which was repeated on 24.02.2021, the proclamation was directed to be issued. On 24.2.2021, proclamation was directed to be issued for 12.04.2021, as is evident from Annexure P9. It is revealed further from the order dated 12.04.2021 that though on that date, proclamation for the petitioner was received back duly executed, but as the stipulated period of 30 days had not elapsed, so matter was adjourned to 20.05.2021. Petitioner was ultimately declared proclaimed person on 12.08.2021, as per Annexure P12, after noticing that period of 30 days had already elapsed since the date of the publication of proclamation on 20.03.2021.

5. It is evident from the aforesaid facts that though proclamation was issued on 24.02.2021 for 12.04.2021, but petitioner was not declared proclaimed person on 12.04.2021, as the period of 30 days had not elapsed on

that day. However, the day petitioner was declared proclaimed person on 12.08.2021, there was no proclamation for that particular date. Petitioner could not have been declared proclaimed person on that day pursuant to the proclamation, by which he was required to surrender/appear before the trial Court on 20.05.2021. As such, the order dated 12.08.2021 passed by Id. trial Court, declaring the petitioner as proclaimed person, cannot be sustained in the eyes of law being in violation of Section 82 Cr.PC. Said order is accordingly hereby set aside.

6. However, at the same time, it has been found that petitioner breached the condition of bond, which he had furnished before the Court on 03.12.2018 (Annexure P16).

7. Considering the above facts and circumstances, it is directed that petitioner shall surrender before the trial Court on or before 17.02.2024. On his surrender, the trial Court concerned shall initiate proceedings under Section 446 CrPC and only after disposal of those proceedings, petitioner shall be admitted to bail. It is made clear that till disposal of the proceedings under Section 446 CrPC, petitioner shall not be taken into custody. If in the meantime, petitioner is sought to be arrested, he shall be admitted to interim bail to the satisfaction of the Arresting/Investigating Officer. In case petitioner fails to surrender up to 17.2.2024, this petition shall be deemed to have been dismissed.

Disposed of accordingly.

29.01.2024

Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
No