

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-64277-2023

Date of Decision : January 23, 2024

BALJIT SINGH @ BALJIT SINGH MALHI -PETITIONER

V/S

STATE OF PUNJAB AND ANOTHER -RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Ms. Gagan Deep Grewal, Advocate
for the petitioner.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, as instituted under Section 482 of the Cr.P.C., the petitioner, who is a citizen of Canada and has been summoned in a private complaint bearing No.COMI/447/2013, has invoked the extraordinary jurisdiction of this Court, thereby seeking quashing of the impugned order dated 13.09.2011 (Annexure P-9), whereby, he has been declared as “Proclaimed Offender” by the learned trial Court concerned.

2. The learned counsel for the petitioner, in her asking for the relief (supra) and assailing the impugned order dated 13.09.2011, has argued that, even prior to his summoning in the complaint (supra), the petitioner had shifted and settled his abode in Canada, therefore, he ought to have been properly served though recouring the appropriate mode, i.e. through Ministry of External Affairs. Furthermore, by placing reliance upon the zimni orders of the learned trial Court concerned, she has argued that all the summons were sent at the old address of the petitioner, which

resulted in his remaining unacquainted with any proceedings, besides resulted in his being declared as “Proclaimed Offender” without any fault on his part.

3. A Co-ordinate Bench of this Court had, on 21.12.2023, passed the hereinafter extracted order, upon the instant petition:-

“By way of the present petition, challenge is being laid to order, Annexure P9, whereby petitioner has been declared as a Proclaimed Offender, as well as to the complaint, Annexure P1, on the ground that the co-accused have faced trial and have been acquitted. Reliance is being placed upon a Division Bench judgment of this Court passed in Sudo Mandal @ Diwarak Mandal vs. State of Punjab 2011(2) RCR (Crl) 453.

By making a reference to interim orders dated 04.06.2011 and 05.08.2011 (at page 136 and 138 of the paper-book), counsel for the petitioner urges that the despite the fact that it had come on record that the petitioner is in Canada, no attempt was made to serve him through the Ministry of External Affairs. Another argument has been raised by her that proclamation was effected on 22.07.2011, but the date given for appearance was 05.08.2011, which does not meet the mandate of Section 82 Cr.P.C. inasmuch as the petitioner did not get clear 30 days notice for appearance. Reliance has also been placed on judgments of this Court in Ashok Kumar Versus State of Haryana and another, 2013(4) RCR (Criminal) 550 and Anita Sharma Versus State of Punjab (CRM-M-25088-2021), decided on 16.07.2021.

As the petitioner is in Canada, counsel for the petitioner requests for an adjournment to get instructions and apprise the Court as to when he will surrender before the trial Court.....”

4. Today, the learned counsel for the petitioner, on instructions imparted to her by the petitioner, has informed this Court that the petitioner is coming to India on 11.03.2024, and thereafter, he will surrender before the learned trial Court concerned upto 30.03.2024.

However, she has requested that the petitioner may kindly be granted adequate protection from his arrest, for thereby enabling him to surrender before the learned trial Court concerned, and, to make an application for grant of regular bail, in pursuance of the apposite summoning order.

5. The learned counsel for the petitioner has further argued that since co-accused of the petitioner have already been either acquitted or discharged, therefore, there is every likelihood that the petitioner may also get the same treatment and would earn acquittal in the complaint (*supra*).

6. Be that as it may, since the petitioner is ready and willing to surrender before the learned trial Court concerned, therefore, this Court, at this stage, is not examining the validity of the impugned order dated 13.09.2011. However, since the petitioner, who settled abroad in 2006, has been summoned in 2008, therefore, *prima facie* this Court is of the view that the petitioner has not deliberately evaded the process of law. Moreover, since the petitioner has been summoned in a private complaint, therefore, his custodial interrogation is also not required.

7. In view of the above, this Court deems it appropriate to grant an opportunity to the petitioner to surrender before the learned trial Court concerned upto 30.03.2024 and thereupon, if he makes an application before the latter for grant of regular bail, the latter shall decide the same most expeditiously, but, after affording adequate opportunity of hearing to the opposite party. The arrest of the petitioner shall remain stayed only upto 30.03.2024 and he shall not be arrested at the Airport concerned, upon his arrival from abroad.

8. However, it is clarified that if the petitioner did not, in

compliance of the intimation made to this Court by his counsel, surrender before the learned trial Court concerned upto the above stipulated period, the protection qua his arrest, as granted hereinabove, shall stand *ipso facto* vacated, without any further reference to this Court.

9. Disposed of accordingly.

January 23, 2024
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(KULDEEP TIWARI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No