

2025:PHHC:000453



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

123

CRM-M-65223-2024 (O&M)
Date of decision: 07.01.2025

Varinder Kumar ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vinod K. Kaushal, Advocate
for the petitioner.

Ms. Swati Batra, Deputy Advocate General, Punjab.

Mr. Rahul Garg, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner for quashing of order dated 24.02.2020, passed by the Court of learned Additional Chief Judicial Magistrate, Amritsar in case titled as *State vs. Varinder Kumar and another*, arising out of FIR No. 240 dated 26.12.2016, registered under Sections 420 and 120-B of IPC and Section 13 of the Punjab Prevention of Human Smuggling Act at Police Station Sadar Amristar, whereby the petitioner had been declared a proclaimed offender.
2. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in this case. The matter relates to a monetary dispute, which has already been settled between the parties concerned. The petitioner had subsequently shifted to Chandigarh and was not aware about the pendency of the case against him. He had earlier filed a petition bearing number

2025:PHHC:000453



CRM-M-44156-2023, whereby, vide order dated 14.09.2023, he was directed to surrender before the Court concerned on or before 25.09.2023. However, since the petitioner could not appear before the Court due to some miscommunication, the said petition was dismissed, vide order dated 14.09.2023. It is further submitted that even otherwise, the petitioner was never served with any notice/summons/warrants issued by the learned trial Court. He had been declared a proclaimed offender without following the proper procedure prescribed under Section 82 of Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

3. Learned State counsel, assisted by learned counsel for respondent No. 2, who has advance notice of the petition, has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the learned trial Court. Therefore, he was rightly declared a proclaimed offender. Hence, it is urged that the petition is liable to be dismissed.

4. I have heard learned counsel for the parties and have also gone through the material placed on record.

5. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the trial Court from the date of initiating proceedings under Section 82 of Cr.P.C. as against the petitioner till the date of declaring him a proclaimed offender, I am of the considered opinion that the impugned order dated 24.02.2020 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

6. After going through the material placed on record as well as the

2025:PHHC:000453



16.12.2019, the learned trial Court had ordered for issuance of proclamation against the petitioner for 27.01.2020 as ASI Dilbagh Singh suffered a statement on oath that the petitioner was intentionally avoiding his service and arrest. A bare perusal of this order shows that the learned trial Court before ordering for publication of proclamation has not recorded its satisfaction much less proper satisfaction that that the petitioner had absconded or was concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence, which was in violation of the provisions of Section 82(1) of Cr.P.C. Reliance in this regard can be placed upon ***Rohit Kumar Vs. State of Delhi : 2008 Crl. J. 2561.***

7. Further, when the case was taken up on 27.01.2020, the proclamation was received duly effected and the statement of the serving police official was recorded. However, the case was adjourned to 21.02.2020 for awaiting the appearance of the petitioner, which was obviously uncalled for as the learned trial Court should have declared the petitioner as proclaimed offender/person on the same date. Hence, it can be stated that the procedure adopted by the learned trial Court was not in consonance with the provisions of Section 82 of Cr.P.C.

8. Accordingly, in view of the discussion as made above and also in view of the ratio of law as laid down in above cited authorities, the present petition is allowed and the impugned order dated 24.02.2020, passed by the Court of learned Additional Chief Judicial Magistrate, Amritsar in case titled as ***State vs. Varinder Kumar and another***, arising out of FIR No. 240 dated 26.12.2016, registered under Sections 420 and 120-B of IPC and Section 13 of the Punjab Prevention of Human Smuggling Act at Police Station Sadar

2025:PHHC:000453



Amristar, whereby the petitioner had been declared a proclaimed offender, is quashed with all consequential proceedings arising therefrom.

9. However, the petitioner is directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

10. 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 and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

11. Till the appearance of the petitioner before the learned trial Court, his arrest shall remain stayed.

12. It is made clear that in case the petitioner fails to appear before the learned trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

07.01.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No