

Before Suvir Sehgal, J.

DHARMENDER KUMAR—Petitioners

versus

STATE OF HARYANA—Respondents

CRM-M No.19646 of 2021

February 17, 2021

Code of Criminal Procedure, 1973 – S. 482 – Quashing of order declaring the petitioner as proclaimed person and quashing of FIR registered under Section 174-A, IPC – Held, when the accused surrenders before the trial Court, he is no longer described as an offender – He is not evading arrest – Proceedings declaring him as proclaimed person and consequential FIR quashed – Petition allowed

Held that, the objective of the provision contained in Section 82 of Cr.P.C is to ensure the presence of the accused. Once the accused surrenders before the trial Court and joins the proceedings, he can no longer be described as an offender. Upon appearance of the accused, the purpose for which the proceedings under Section 82 Cr.P.C. have been initiated, stands achieved. Still further, a Co-ordinate Bench of this Court in CRM-M-9450 of 2014 titled as 'Ashish Gupta Vs. State of Punjab' decided on 02.08.2014 held as under:-

“When an accused is trying to avail of the legal remedy of anticipatory bail available to him so as to avoid being taken into custody, it cannot be said that he has been evading his arrest or gone into hiding. Further, when on 04.02.2014, the petitioner was granted interim relief of anticipatory bail, he did appear before the Investigating Officer and joined investigation. This further confirms the fact that at no stage, did the petitioner intentionally evade his arrest. Even when this Court had dismissed the petition of the petitioner for grant of anticipatory bail on 28.02.2014 as having been withdrawn, he filed the present petition within no time thereafter with a prayer that the order declaring him a Proclaimed Offender be set aside. It appears that without giving reasonable time to the petitioner to avail of the remedies available to him under the law that the prosecution rushed for getting him declared a Proclaimed Person. It is true that the petitioner was all the time aware of his

having been implicated as an accused in the FIR as his co-accused, who had already been taken into custody were his near relatives but that is no ground to hold that the petitioner had been evading his arrest.....”

(Para 7)

Further held that, the above reproduced observations of a Coordinate Bench of this Court are fully applicable to the facts of this case. Consequently, this Court has no hesitation in coming to the conclusion that the order declaring the petitioner as Proclaimed Person and the consequential FIR deserve to be set aside.

(Para 8)

Sandeep Kumar Yadav, Advocate
for the petitioner.

Gurmeet Singh, AAG, Haryana
for the respondent-State.

Mukesh Yadav, Advocate
for the complainant.

SUVIR SEHGAL J.

(1) The Court has been convened through video conferencing due to Covid-19 pandemic.

(2) Through the instant petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks quashing of order dated 29.06.2020 (Annexure P-5) passed by Sub-Divisional Judicial Magistrate, Kanina, District Mahendargarh whereby he was declared as Proclaimed Person in FIR No.1 dated 01.01.2020 registered under Sections 452, 323, 376, 511, 506, 216 of Indian Penal Code, 1860 at Police Station Kanina, District Mahendargarh (Annexure P-1) as well as FIR No.235 dated 08.07.2020 registered under Section 174-A, IPC at Police Station Kanina, District Mahendargarh (Annexure P-6).

(3) Facts, in brief, leading to the filing of the present petition are that FIR (Annexure P-1) was registered on a complaint by the prosecutrix wherein she alleged that the petitioner tried to rape her. Two days later, wife of the petitioner got an FIR registered against the father of the complainant- prosecutrix under Section 354-B IPC on 03.01.2020 (Annexure P-2). After inquiry, the investigating agency submitted a cancellation report before the trial Court on 20.05.2020.

The petitioner has filed a protest petition which is stated to be pending. The petitioner approached the Sessions Court for grant of anticipatory bail under Section 438 Cr.P.C, which was declined on 22.05.2020. He approached this Court for the same relief, vide CRM-M- 13960 of 2020, which was withdrawn on 06.07.2020 as the State counsel informed the Court that the petitioner has been declared as Proclaimed Person, vide order Annexure P-5. Thereafter, the instant petition was filed and came up for hearing on 20.07.2020 wherein while issuing notice of motion, this Court stayed the operation of the impugned order and ordered that no coercive action shall be taken against the petitioner on the basis of the FIR (Annexure P-6) which stood registered on 08.07.2020. The petitioner filed yet another petition for grant of anticipatory bail (CRM-M- 20488 of 2020) in which the petitioner was granted interim bail on 27.07.2020. In compliance of the order passed by this Court, the petitioner joined the investigation. However, the said petition was dismissed on 05.08.2020, keeping in view the serious nature of the offence, conduct and antecedents of the petitioner. The petitioner then approached the Hon'ble Supreme Court by filing SLP (Criminal) No.3982 of 2020 which was dismissed on 18.09.2020. While dismissing his petition, the Apex Court observed that if the petitioner surrenders before the trial Court and files an application seeking enlargement on bail, the trial Court should consider the same and dispose it in accordance with law. The petitioner surrendered before the trial Court on 24.09.2020 and sought release on regular bail which was declined on 09.12.2020.

(4) Counsel for the petitioner has urged that the petitioner was seeking recourse available to him under the law and there was no intention on his part to evade from the process. It is his argument that in pursuance to the order passed by the Hon'ble Supreme Court, the petitioner has surrendered before the trial Court and therefore, the order declaring him as a Proclaimed Person has lost its sting and the said order and impugned FIR deserve to be set aside.

(5) Opposing the petition, State counsel, who is assisted by the counsel for the complainant submit that even before the petition for grant of anticipatory bail was dismissed by the Sessions Court on 22.05.2020, warrant of arrest was issued. When it remained un-served, the Court invoked Section 82 of the Code of Criminal Procedure and ordered his service by way of a proclamation which was carried out on 22.05.2020. Referring to the reply filed by way of affidavit of Deputy Superintendent of Police, Mahendargarh, he submits that the statement

of the serving officer was recorded before the trial Court on 20.06.2020 and by virtue of the impugned order (Annexure P-5), the petitioner was declared as Proclaimed Person and the impugned FIR (Annexure P-6), was registered as a consequence thereof. Still further, he submits that petition (CRM-M-38149 of 2020) for grant of bail pending trial has been withdrawn after arguments by the petitioner from this Court today.

(6) I have considered the respective submissions of the counsel for the parties.

(7) The objective of the provision contained in Section 82 of Cr.P.C is to ensure the presence of the accused. Once the accused surrenders before the trial Court and joins the proceedings, he can no longer be described as an offender. Upon appearance of the accused, the purpose for which the proceedings under Section 82 Cr.P.C. have been initiated, stands achieved. Still further, a Co-ordinate Bench of this Court in CRM-M-9450 of 2014 titled as 'Ashish Gupta Vs. State of Punjab' decided on 02.08.2014 held as under:-

“When an accused is trying to avail of the legal remedy of anticipatory bail available to him so as to avoid being taken into custody, it cannot be said that he has been evading his arrest or gone into hiding. Further, when on 04.02.2014, the petitioner was granted interim relief of anticipatory bail, he did appear before the Investigating Officer and joined investigation. This further confirms the fact that at no stage, did the petitioner intentionally evade his arrest. Even when this Court had dismissed the petition of the petitioner for grant of anticipatory bail on 28.02.2014 as having been withdrawn, he filed the present petition within no time thereafter with a prayer that the order declaring him a Proclaimed Offender be set aside. It appears that without giving reasonable time to the petitioner to avail of the remedies available to him under the law that the prosecution rushed for getting him declared a Proclaimed Person. It is true that the petitioner was all the time aware of his having been implicated as an accused in the FIR as his co-accused, who had already been taken into custody were his near relatives but that is no ground to hold that the petitioner had been evading his arrest.”

(8) The above reproduced observations of a Co-ordinate Bench

of this Court are fully applicable to the facts of this case. Consequently, this Court has no hesitation in coming to the conclusion that the order declaring the petitioner as Proclaimed Person and the consequential FIR deserve to be set aside.

(9) As a result of the above discussion, the petition is disposed of. The order dated 29.06.2020 passed by the Sub-Divisional Judicial Magistrate, Kanina, (Annexure P-5) and FIR No.235 dated 08.07.2020 registered under Section 174-A, IPC, P.S.Kanina, District Mahendergarh (Annexure P-6) are ordered to be quashed.

Payel Mehta