

JAGJIT SINGH v. STATE OF PUNJAB

Punjab and Haryana High Court

Before : Justice Sureshwar Thakur.

JAGJIT SINGH and another – Petitioners,

Versus

STATE OF PUNJAB – Respondent.

CRM-M No. 51993 of 2021 (O&M)

Criminal Procedure Code, 1973, S. 173 – Accused Petitioners prior to the registration of the FIR, had proceeded to United Kingdom, and, still are in United Kingdom – Application filed under Section 173 Cr.P.C. by Investigation Officer for issuance of non-bailable warrants upon the petitioners – Since the petitioners throughout, since the launching of initial investigations in the FIR and, upto now, are residing in a foreign land, consequently, they could never render their personal cooperation to the investigating officer nor they could validly institute a petition under Section 438 Cr.P.C., before the Courts situated in India as it was incumbent upon them to record their personal appearances – Investigating officer if he intended to secure their appearances before him, or before the Court of law, was required to ensure that personal service of the process of Court, should have gone through the embassy of India, located in U.K. – However, the same was not done – The investigating officer, has not ensured the causing of personal service upon the accused at U.K., prior to the issuance of non-bailable warrants, as issued by the learned Magistrate concerned – Nor the learned Magistrate has ensured that the non-bailable warrants became served personally upon the accused at U.K. through the aegis of the embassy of India, located in U.K. – Order declaring the petitioners, as proclaimed offenders, quashed

Mr. Atul Goyal, for the petitioners. Mr. C.L.Pawar, Sr. DAG, Punjab.

Sureshwar Thakur, J. (ORAL) – (21.12.2021) – FIR No. 26 dated 7.3.2018, registered at Police Station City Raikot, District Ludhiana (Rural), constitutes therein offences, under Sections 420, 506/34 IPC.

2. The petitioners are named as accused in the afore FIR. The FIR became registered on 07.3.2018. Believing the statement, made at the bar by the learned counsel for the petitioners, that the petitioners, prior to the registration of the afore FIR, had proceeded to United Kingdom, and, also believing his further statement, as made by him, at the bar that, still the petitioners are in United Kingdom. Therefore, from the above stated facts, as stated at the bar by the learned State counsel, and, from the fact as also stated at bar by the

learned counsel for the petitioner, that the report under Section 173 Cr.P.C., has been instituted before the learned Magistrate concerned, on 09.2.2021. Consequently, it is to be determined that, thereupon whether the petitioners, who did not cause their personal appearance before the investigating officer concerned, for their rendering co-operation to the investigating officer concerned, nor they instituted any application before any Court of Law, in India, seeking according of indulgence of anticipatory bail to them. Consequently, when the investigating officer concerned was empowered under law, to make a motion before the learned Magistrate concerned, for issuance of non- bailable warrants upon the petitioners, and, thereafter upon failure of their execution, upon the petitioners, to seek an order for declaring the petitioners as proclaimed offenders.

3. Though the petitioners, evidently at the initial stage of investigations commencing into the offences (supra) in FIR (supra), became enjoined to render cooperation, to the investigating officer concerned, and, also became enjoined to, upon non-bailable offences, being carried in the FIR (supra), to make an motion seeking indulgence of anticipatory bail, being accorded to them, rather before the Court concerned. Moreover, if the petitioners concerned, did not make the afore participation, nor sought indulgence of the Court concerned, for grant of anticipatory bail to them, and, with the FIR progressing to the stage of filing of a challan before the Court. In sequel, it was open to the investigating officer concerned, to make a motion, before the learned Magistrate concerned to, ensure that they cause their appearances, before the latter, through issuance of non-bailable warrants, upon them, and, also upon failure of execution thereof upon, the petitioners, to seek an order declaring them as proclaimed offenders. The afore order, would be valid, subject to the petitioners residing at the afore phase in India, as it would hence ensure that the accused concerned became obviated, from their fleeing from the process of law, or fleeing from justice.

4. Be that as it may, since the petitioners throughout, since the launching of initial investigations in the FIR (supra), and, upto now, are residing in a foreign land. Consequently, they could never render their personal cooperation to the investigating officer concerned, in his making investigations into the offences (supra), nor they could validly institute a petition under Section 438 Cr.P.C., before the Courts situated in India, as for rendering the application under Section 438 Cr.P.C., rather maintainable before the Courts in India, it was incumbent, upon the petitioners to record their personal appearances, before the Court concerned.

5. Moreover, since the petitioners, from the date of registration of the FIR (supra), and, upto now, are in a foreign land, and, hence they could not render cooperation to the investigating officer concerned, thereupon, it was imperative for the investigating officer concerned, to even if he intended to secure their appearances before him, or before the Court of law, to ensure that personal service of the process of Court, became through the embassy of India, located in U.K., hence effected upon, on each of the accused. However, the afore evidence is grossly amiss. Consequently, upon a valid personal service being made upon the accused by the investigating officer concerned, through the embassy of India, located at United Kingdom, and, thereafter their yet not recording their personal appearances, for the relevant purposes, either before the investigating officer, or before the

learned Magistrate concerned, thereupon it was open for the latter to thereafter seek issuance of non-bailable warrants, from the learned Magistrate concerned, and, also the afore process was required to become personally served upon the petitioners, at their abode, in U.K. However, neither the investigating officer, has ensured the causing of personal service upon the accused at U.K., prior to the issuance of non- bailable warrants, as issued by the learned Magistrate concerned, nor the learned Magistrate concerned, has ensured that the non-bailable warrants became served personally upon the accused at U.K., hence through the aegis of the embassy of India, located in U.K. The effect of the afore non-recoursings, is, that the impugned order declaring the petitioners, as proclaimed offenders, becomes quashed, and, set aside.

6. Nonetheless, the afore order does not yet preclude the investigating officer, or the learned Court concerned, to cause upon the petitioners, personal service of non-bailable warrants, for therethroughs, theirs respective personal appearances being ensured before the investigating officer, if required for the carrying of investigations into the offences (supra) or for therethrough their respective personal appearances, being ensured before the learned Magistrate concerned. However, the afore can be done through the embassy of India at U.K.

7. It is also open to the petitioners to after visiting India, to surrender before the learned Magistrate concerned, and, it is also open to them to prior thereto make a petition, under Section 438 Cr.P.C., before the Criminal Court of competent jurisdiction, seeking the indulgence of theirs being granted anticipatory bail

8. The petition stands disposed of.

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quashed

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Proceedings