

15. In that view of the matter, we are in-clined to partly allow the present appeals.

16. Accordingly, we pass the following or-der:

A. The appeals are partly allowed.

B. The impugned judgment and order dated 8th February, 2017 passed by the Division Bench of the High Court of Madhya Pradesh, Gwalior Bench in Writ Appeal No. 386 of 2016 along with companion matters is quashed and set aside;

C. The judgment and order dated 29th September, 2016 passed by learned single judge of the High Court is modified as un-der:

(i) The writ petitioners - appel-lants herein would be entitled to continue on their respective posts till they are replaced by regularly selected candidates;

(ii) The writ petitioners - appel-lants herein would be continued on their respective posts provided that a sufficient number of students are available for the particular course(s) for which the writ peti-tioners -appellants herein are ap-pointed.

(iii) The writ petitioners - appel-lants herein would be entitled to honorarium at the rate of Rs. 1,000/- per hour as is being paid to them presently.

17. Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.

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(2022-2)206 PLR 684

PUNJAB AND HARYANA HIGH COURT

Before: Justice Anoop Chitkara

SURJIT SINGH DHALIWAL - Petitioner,

Versus

STATE OF PUNJAB and another - Respondents.

CRM-M-20849-2021

Criminal Procedure Code, 1973, S. 82, 482 - Accused could not be served through the ordinary process, including summons,ailable warrants, and even non-ailable warrants, and proceeded against under section 82 of CrPC and declared a proclaimed offender - Primary object of service is to secure the accused's presence in trial - The petitioner has approached this court on its own, which establishes the bonafide at this stage - In the present case, the maximum sentence impossible for the offences mentioned in FIR does not exceed seven years – *Arnesh Kumar v. State of Bihar*, 2014 PLRonline 0200, 2014 SCeJ 001, (2014) 8 SCC 273, shall apply to this petition, wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest the accused automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine - Without adjudicating the explanation offered and stand taken by the petitioner, this court, in the exercise of its inherent powers under section 482 CrPC, deems it appropriate to grant a limited relief - Petitioner shall surrender before the concerned court on or before date given - On appearance, the concerned court shall release the petitioner on bail on the same day, subject to furnishing bail bonds to its satisfaction and imposing additional conditions, as it may deem appropriate - If the petitioner appears before the concerned court, then all warrants issued by the concerned court against the petitioner, in the matter shall stand recalled and cancelled. [Para 2, 6, 11]

Cases referred to:

1. 2014 PLRonline 0200, 2014 SCeJ 001, *Arnesh Kumar v. State of Bihar*.

2. 1980 PLRonline 3001 (SC), 1980 (2) SCC 565, *Gurbaksh Singh Sibbia v State of Punjab*.
3. 2004 PLRonline 0005 (SC), 2005 (2) SCC 42, *Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav*.
4. AIR 1977 SC 2447, *State of Rajasthan v Balchand*
5. 1977 PLRonline 3001 (SC), (1978) 1 SCC 240, *Gudikanti Narasimhulu v Public Prosecutor*.
6. 2001 PLRonline 0002 (SC), (2001) 4 SCC 280, *Prahlad Singh Bhati v NCT, Delhi*.
7. (2018)1 SCeJ 234, 2018 PLRonline 4502 (SC), (2018) 3 SCC 22, *Dataram Singh v State of Uttar Pradesh*
8. 2018 PLRonline 13701 (SC), (2020) 5 SCC 1, *Sushila Aggarwal v. State. Mr. B.S. Bhalla, for the petitioner. Mr. Harsimar Singh Sitta, AAG, Punjab*

Anoop Chitkara, J. - (*Reserved on: 19-04-2022, Pronounced on: 16-05-2022*)

| FIR No. | Dated | Police Station | Sections |
|---------|------------|----------------|--------------|
| 98 | 14.08.2010 | Baghapurana | 420, 406 IPC |

1. Challenging the order of proclamation on being declared a proclaimed offender, the petitioner has come up before this court under section 482 of Code of Criminal Procedure, 1973 (CrPC).

2. The accused could not be served through the ordinary process, including summons, bailable warrants, and even non-bailable warrants. The concerned court finally proceeded against the petitioner under section 82 of CrPC and declared the petitioner a proclaimed offender vide order dated 28 Aug 2015, passed by Ld. SDJM, Baghapurana, Punjab.

3. Ld. counsel for the petitioner seeks quashing on the merits. However, in my considered opinion, the explanation made in paragraph 9 is not at all satisfactory and needs further clarification. However, the submissions made in paragraphs 10 to 12 need consideration and furthermore the criminal justice system must not hamper and suffer because of the petitioner. Thus, this court is inclined to grant the following relief, reserving liberty to raise the remaining prayers, including quashing of FIR registered on proclamation and also for the quashing of FIR registered on the complaint, either on merits or on compromise, if such need so arises.

4. Ld. counsel appearing for the State has strenuously opposed this petition, including any limited relief.

5. After careful analysis of the petition, this court is confining the adjudication of this matter to the extent mentioned herein before, reserving the liberty to the petitioner as prayed.

6. The primary object of service is to secure the accused's presence in trial. The petitioner has approached this court on its own, which establishes the bonafide at this stage. Without adjudicating the explanation offered and stand taken by the petitioner, this court, in the exercise of its inherent powers under section 482 CrPC, deems it appropriate to grant the following limited relief to the petitioner, subject to the compliance of the conditions mentioned in this order.

7. In the present case, the maximum sentence imposable for the offences mentioned in FIR does not exceed seven years. Thus, directions passed in *Arnesh Kumar v. State of Bihar*,¹ 2014 PLRonline 0200, 2014 SCeJ 001, (2014) 8 SCC 273, (Para 13), apply to this petition, wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest the accused automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

8. In *Gurbaksh Singh Sibbia v State of Punjab*,² 1980 PLRonline 3001 (SC), 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the

grant or refusal of bail. In *Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav*,³ 2004 PLRonline 0005 (SC), 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In *State of Rajasthan v Balchand*,⁴ AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In *Gudikanti Narasimhulu v Public Prosecutor*,⁵ 1977 PLRonline 3001 (SC) ,(1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In *Prahlad Singh Bhati v NCT, Delhi*,⁶ 2001 PLRonline 0002 (SC) , (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In *Dataram Singh v State of Uttar Pradesh*,⁷ (2018)1 SCeJ 234, 2018 PLRonline 4502 (SC) , (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

9. The possibility of the accused henceforth not attending the trial, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In *Sushila Aggarwal*,⁸ 2018 PLRonline 13701 (SC), (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

10. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case, and also for the reasons mentioned above, the ends of justice would meet with the following order.

11. The petitioner shall surrender before the concerned court on or before July 30, 2022. On appearance, the concerned court shall release the petitioner on bail on the same day, subject to furnishing bail bonds to its satisfaction and imposing additional conditions, as it may deem appropriate in the background of the accused's conduct.

12. The petitioner to execute a bond for attendance in the concerned court. On the reverse page of personal bonds, the petitioner shall mention the permanent address, along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

13. There shall be a stay of the petitioner's arrest in the case mentioned above until July 30, 2022; however, if the petitioner fails to appear within the time stipulated above, then stay on arrest shall stand vacated without any further reference to this court. It is clarified that if the petitioner appears before the concerned court, then all

warrants issued by the concerned court against the petitioner, in the matter mentioned above shall stand recalled and cancelled.

14. On or before July 30, 2022, the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned before. The petitioner shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating officer asks to share the location, the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, calls nor format the phone without permission of the concerned SHO/I.O. This condition shall continue till the completion of the trial or closure of case, whatever is earlier.

15. By July 30, 2022, the petitioner shall deposit a sum of rupees ten thousand in 'High Court Lawyers Welfare Fund,' Account number 65018692589, SB, IFCI code SBIN0050306, Branch Code 50306, Branch Address State Bank of India, High Court Branch, Sector 1, Chandigarh. After depositing, the petitioner shall file the proof of deposit, before the concerned court and send its copy alongwith a copy of this order to the Secretary, Punjab & Haryana High Court Bar Association, either in physical or electronic mode.

16. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

17. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

18. There would be no need for a certified copy of this order, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

Petition partly allowed to the extent mentioned above. All pending applications, if any, stand disposed.

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