

**(1983) 09 P&H CK 0011**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Writ Petition No. 351 of 1983

Sohan Singh Social Worker

APPELLANT

Vs

S.S.Sohal Addl.C.J.M.

RESPONDENT

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**Date of Decision:** Sept. 20, 1983

**Hon'ble Judges:** B.S.Yadav, J

**Advocate:** G.S. Sarva, M.M.S. Bedi, Advocates for appearing Parties

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**Judgement**

B.S. Yadav, J.

1. This judgment will dispose of above titled Criminal Writ as well as CrI.Misc. 2839M/1983 titled "Sohan Singh v. Addl. C.J.M. and others, and Cr.M.No. 3452M of 1983 titled" Sohan v. S.S. Sohal and others, as in all these cases, the point involved is similar.

2. The facts leading to these petitions are that the present petitioner Sohan Singh along with others was standing trial in the Court of Additional Chief Judicial Magistrate, Amritsar for committing an offence under section 323 Indian Penal Code. During the pendency of the case, revision against an order was filed by Sohan Singh, which was heard by the Additional Sessions Judge, Amritsar. he dismissed the revision petition vide order dated 31st January, 1983, and directed that the petitioner and others shall be tried in accordance with law by the Chief Judicial Magistrate. He further ordered that the case file be sent to the Court of Additional C.J. Magistrate, where the parties were to appear on 5th February, 1983. The petitioner and his coaccused did not appear in the Court of Additional Chief Judicial Magistrate, on the above date. The said Court issued summons to the petitioner and his coaccused. The petitioner was served but did not appear. The learned Court cancelled his bail bond and forfeited it. It also issued warrants of arrest for his arrest. Summons were ordered to be issued against the remaining accused. This order was passed on 26th February, 1983. It appears that in the meantime the petitioner filed an application in the Court of Chief Judicial Magistrate, Amritsar, for the transfer of the case, who dismissed the same. Warrants could not be executed

against Sohan Singh petitioner. On 30th April, 1983, the learned Additional Chief Judicial Magistrate, ordered that he had reasons to believe that the petitioner was absconding and was not likely to be arrested in the near future and as such to secure his presence, proclamation under section 82 Criminal Procedure Code, be published for 2nd June, 1983. he also ordered that the file be put up on 4th May, 1983, for consideration of the issue of warrant of attachment of moveable property of the proclaimed offender. On 4th May, 1983, when the file was taken, one of the coaccused presented an application that the Sohan Singh petitioner was admitted in Guru Nanak Hospital. In the meantime Sohan Singh had also been sending applications and letters to the said Court. On 4th May, 1983 the learned Additional Chief Judicial Magistrate directed that the moveable property of the petitioner be attached. From the order dated 30/4/1983 it appears that the case had been instituted in 1978 and no tangible progress could be made in the case due to dilatory tactics and intentional absence of Sohan Singh petitioner at different stages of the trial, Sohan Singh appeared in custody in the said Court on 10th May, 1983, in execution of warrants of arrest. The Court refused to grant him the benefit of bail on the ground that he had been keeping away from the court intentionally and was declared proclaimed offender. Sohan Singh petitioner was ordered to be sent to judicial custody till the decision of the case.

3. The grievance of the petitioner in the present writ petition as well as in the other Misc. petitions is against the order dated 10th May, 1983.

4. The learned counsel for the petitioner argued that while sending the case back, vide order dated 31st January, 1983, the learned Additional Sessions Judge, had ordered that the case be tried by the Chief Judicial Magistrate, and, therefore, the Additional Chief Judicial Magistrate had no jurisdiction to pass the various orders, reference to which has been made above. This argument has no force. Vide the above order, the learned Additional Sessions Judge also directed the parties to appear in the Court of Additional Chief Judicial Magistrate. Therefore, it was the bounded duty of Sohan Singh petitioner to have appeared in that court and till his presence was secured that Court had jurisdiction to pass the various orders.

5. The learned counsel for the petitioner further urged that he is being prosecuted for bailable offence and the learned trial Court should have released him on bail. The file does not show that the petitioner made any application for bail before the trial Court or before the Sessions Judge. Had such application been made, I am sure, those Courts would have considered his application in accordance with law, keeping in view the circumstances of the case. When petitioner had appeared before the learned Addl. Chief Judicial Magistrate, on 10th May, 1983, in custody, after his earlier bail had been cancelled, the learned Court thought it fit to send him to judicial custody as he was not allowing the case to proceed. It is immaterial if the offence under which the petitioner had been arrested, is bailable one or not. Section 436(2) of the Criminal Procedure Code lays down that where person had failed to

comply with the conditions of the bail bond, as regards the time and place of attendance, the Court may refuse to release him on bail when on subsequent occasion in the same case he appears before the Court or is brought in custody. Therefore, it cannot be said that orders passed by the Addl. Chief Judicial Magistrate on 10th May, 1983, is in any way without jurisdiction. In such circumstances, it is difficult to hold that the custody of the accused is illegal and therefore, he is not entitled to the issuance of a writ in the nature of Habeas Corpus as prayed in the present writ petition.

6. Other Misc. petitions have been filed to quash the various orders passed by the learned Addl. Chief Judicial Magistrate. For the reasons recorded above, those orders cannot be without jurisdiction and, therefore, are not liable to be quashed.

7. For the foregoing reasons, I do not find any force in the present writ petition as well as in the Misc. Criminal petitions and dismiss the same.

8. Before concluding I may take up one prayer of the learned counsel for the petitioner. He prayed that as the records have been perused by this Court, this Court may grant bail to the petitioner. I am not prepared to accept this request. It is settled principle that an accused person should first approach lower Courts for bail and in case he is not granted bail, he can come to this Court for bail. Therefore, if so advised, the petitioner can file the application for bail before the Courts below.