

(2014) 08 P&H CK 0278

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Misc. No. M-9450 of 2014

Ashish Gupta

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Aug. 2, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 438, 482, 82(i)
- Penal Code, 1860 (IPC) - Section 306, 34

Hon'ble Judges: T.P.S. Mann, J**Bench:** Single Bench**Advocate:** Sukhdeep Singh Sidhu and Parminder Singh, Advocate for the Appellant;
Gurinderjit Singh, Deputy A.G, Advocate for the Respondent**Final Decision:** Allowed

Judgement

T.P.S. Mann, J.

Prayer made in the petition filed by the petitioner u/s 482 Cr.P.C. is for quashing of order dated 15.10.2013 (Annexure P-15) vide which he was declared a proclaimed person in FIR No. 103 dated 25.7.2013 under Sections 306/34 IPC registered at Police Station City Rampura, District Bathinda.

2. The petitioner, alongwith his sister-Pooja Gupta, father-Ajay Gupta and mother-Nirmala Gupta was arraigned as accused in the aforementioned FIR registered under Sections 306/34 IPC at the instance of complainant-Gurcharan Dass, father of deceased Harish Kumar. The complainant stated that his younger son Harish Kumar was married to Pooja Gupta, daughter of Ajay Gupta on 11.2.2012 and he had a male child. Since the time Harish Kumar got married, his wife-Pooja Gupta, father-in-law-Ajay Gupta, mother-in-law-Nirmala Gupta and brother-in-law-Ashish Gupta had been demanding money from him. Harish Kumar had given a sum of Rs. 10,00,000/- to them. They also took the entire gold. Despite that they were demanding more money and for the last one week, there was

tension in his house. On 24.7.2013, a congregation was held in the house of Harish Kumar in which his wife, mother-in-law, brother-in-law and father-in-law, besides Vijay Kumar, Ajay Kumar, Harish Kumar, Ashwani Kumar, Sher Jang and others participated. In that meeting, Pooja Gupta, Nirmala Gupta, Ashish Gupta and Ajay Gupta, besides demanding more money, asked Harish Kumar to transfer the property in the name of Pooja Gupta and in case it was not done they threatened to get a false case of dowry registered against him and his family members. Being fed up with all this, Harish Kumar consumed sulphas tablets on 25.7.2013 at 10.00 a.m. He was taken to Civil Hospital, Rampura for treatment but the doctor referred him to Adesh Hospital where he died during his treatment. Accordingly, complainant-Gurcharan Dass held the wife, father-in-law, mother-in-law and brother-in-law of his son Harish Kumar responsible for abetting the commission of suicide by him.

3. During investigation of the case, the police is said to have recovered suicide-note written by Harish Kumar wherein apart from mentioning that the petitioner and his relatives had been demanding money from him everyday and he was fed up with daily demands, he stated that after his death his son would not be entitled to any money or property. Rather, the entire gold be given to his parents.

4. Apprehending his arrest, the petitioner filed an application dated 30.9.2013 (Annexure P-2) u/s 438 Cr.P.C. for grant of anticipatory bail which application came up for consideration before Additional Sessions Judge, Bathinda on 1.10.2013 when notice was issued for 8.10.2013. On 8.10.2013, the hearing of the application was adjourned to 14.10.2013 and, thereafter, to 24.10.2013 and 7.11.2013. All this while, there was no interim relief granted to the petitioner. Ultimately, Additional Sessions Judge (Ad hoc) Fast Track Court, Bathinda dismissed the application vide order dated 16.1.2014 (Annexure P-7). He then moved this Court for a similar relief. Vide order dated 4.2.2014, a co-ordinate Bench of this Court, while issuing notice to Advocate General, Punjab issued interim direction requiring the petitioner to join investigation on 15.2.2014 between 10.00 a.m. and 5.00 p.m. and in case of his doing so, he be released on interim bail to the satisfaction of the Arresting/Investigating Officer. Post-notice, the application for anticipatory bail came up for consideration before this Court on 28.2.2014 when learned State counsel as well as learned counsel for the complainant informed the Court that the petitioner stood declared as a proclaimed person by Sub Divisional Judicial Magistrate, Phul vide order dated 15.10.2013. In view of the same, learned counsel for the petitioner prayed for withdrawing the petition for anticipatory bail with liberty to the petitioner to challenge the order of declaring the petitioner a proclaimed person. The petition was, accordingly, dismissed as withdrawn with liberty aforementioned. Copy of order dated 28.2.2014 is appended with the petition as Annexure P-9.

5. It may be worthwhile to mention here that Station House Officer submitted application dated 30.8.2013 (Annexure P-10) before the trial Court for issuing arrest warrants against the petitioner as he was evading his arrest and even after number of raids, he was not met at the given address. The request was accepted and vide order dated 30.8.2013 (Annexure P-11) learned Sub Divisional Judicial Magistrate, Phul issued arrest warrants of the petitioner for 5.9.2013. As the non-bailable warrants remained unexecuted, learned Sub Divisional Judicial Magistrate vide order dated 5.9.2013 (Annexure P-12) came to the conclusion that the petitioner could not be summoned through non-bailable warrants. Accordingly, he was summoned through proclamation u/s 82(i) Cr.P.C. for 28.9.2013. On 28.9.2013, learned Sub Divisional Judicial Magistrate recorded the statement of HC Surjit Singh to the effect that he had taken proclamation to the place of residence of the petitioner who was not found present there. One copy of the proclamation was pasted on the front door and another at open space on 11.9.2013. Accordingly, HC Surjit Singh prayed for declaring the petitioner a proclaimed offender. After recording statement of the serving official, learned Sub Divisional Judicial Magistrate, Phul adjourned the proceedings. Finally, after the expiry of the statutory period of 30 days and the petitioner failing to put in appearance in the Court, learned Sub Divisional Judicial Magistrate, Phul vide order dated 15.10.2013 (Annexure P-15) declared the petitioner a proclaimed person.

6. Reply has already been filed on behalf of the complainant. The State has also filed its reply, which is taken on record and copy thereof supplied to counsel for the petitioner.

7. Having heard counsel for the parties and going through the various orders passed by the different Courts, this Court is of the considered view that the impugned order dated 15.10.2013 (Annexure P-15) passed by learned Sub Divisional Judicial Magistrate, Phul cannot be sustained. The incident of commission of suicide by Harish Kumar had taken place on 25.7.2013. Soon thereafter complainant-Gurcharan Dass, father of deceased Harish Kumar, made statement before ASI Gurjant Singh, on the basis of which FIR No. 103 dated 25.7.2013 under Sections 306/34 IPC came to be recorded at Police Station Rampura. With the registration of the FIR, the police machinery swung into action and were able to effect the arrest of Pooja Gupta, Ajay Gupta and Nirmala Gupta, co-accused of the petitioner. Apprehending his arrest, the petitioner also moved the Court of Sessions by filing application dated 30.9.2013 which came up for consideration before Additional Sessions Judge, Bathinda on 1.10.2013 and notice issued to the State. The said application remained pending for some time but in the interregnum, the petitioner was not granted any interim relief. His bail application came to be dismissed on 16.1.2014. As is apparent from the order dated 16.1.2014, neither the State counsel nor the counsel for the complainant informed the Court of Sessions about the petitioner having been declared a proclaimed person. Subsequent to the dismissal of the application of the petitioner for the grant of anticipatory bail by the

Court of Sessions, he approached this Court for the grant of anticipatory bail by filing Criminal Misc. No. M-3761 of 2014, which came up for consideration before a co-ordinate Bench of this Court on 4.2.2014 when notice was issued and interim relief granted to him. Pursuant to the directions, the petitioner did appear before the Investigating Officer. However, on 28.2.2014, learned State counsel as well as learned counsel for the complainant disclosed about the petitioner having been declared a proclaimed person vide order dated 5.10.2013 passed by Sub Divisional Judicial Magistrate, Phul. Faced with the same, learned counsel for the petitioner withdrew the petition and was granted liberty to challenge the aforementioned order declaring the petitioner a proclaimed person.

8. From the chronology of events, it is made out that though the police had been making all possible attempts to arrest the petitioner, he had been knocking the doors of the Court for being granted the concession of anticipatory bail. It is another thing that at the initial stage as well as at the final stage of the hearing of the petition filed by the petitioner for the grant of anticipatory bail, the Court of Sessions did not grant him any relief. It was only on 4.2.2014 that he was granted interim relief by a co-ordinate Bench of this Court. Heaving a sigh of relief, the petitioner even appeared before the Investigating Officer and joined the investigation. However, on the next date of hearing of the petition, i.e. 28.2.2014, this Court dismissed the said petition as having been withdrawn with liberty to the petitioner to challenge the order dated 15.10.2013 passed by Sub Divisional Judicial Magistrate, Phul declaring him a proclaimed person. 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 4.2.2014, 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 the grant of anticipatory bail on 28.2.2014 as having been withdrawn, he filed the present petition within no time thereafter with a prayer that the order declaring him a proclaimed person 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 intentionally evading his arrest. He was also the only member of his family who could have taken steps for getting his co-accused released on regular bail as they stood arrested in the case.

9. Resultantly, the petition is accepted and the order dated 15.10.2013 (Annexure P-15) passed by the Sub Divisional Judicial Magistrate, Phul is set aside.