

Before Lisa Gill, J.

SIMARJEET SINGH BAINS —*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER —*Respondent*

CRM-M No. 53680 of 2021

June 10, 2022

Indian Penal Code, 1860— Ss. 376, 354,354 A, 506, 120-B, 174 A—Code Of Criminal Procedure, 1973—Ss. 70 (2), 82, 156 (3), 173, 362, 482—FIR registered on petition under Section 156 (3) Cr.P.C. filed by prosecutrix—Petitioner/Accused a Member of Legislative Assembly and President of political party exercising clout—Despiteailable and non-ailable warrants—Petitioner/Accused did not appear before Trial Court and declared proclaimed person/ absconder, while holding public rallies—Magistrate recorded required satisfaction at all stages i.e. at time of issuance ofailable and non-ailable warrants as well as proclamation under Section 82 Cr.P.C.—Not the case of the Petitioner/ Accused—That he was unaware of proceedings—No infirmity found in proclamation proceedings—Petition disposed of.

Held, that it is a matter of surprise that the police authorities felt powerless and ineffective in front of the ‘rage’ of the supporters of accused No.1 and so fearful of the law and order situation which they perceived would be created in the wake of said petitioner’s arrest, that the Challan was presented with a request to summon the accused in Court. In the given factual matrix, in my considered opinion, accused-petitioners are not at liberty to take any benefit of the shortcomings on the part of the investigating agency/police. Aforesaid is indeed a reflection on the clout which the said accused-petitioner was able to wield on the police authorities, which is further reflected from the fact that even the nonailable warrants directed to be served through Commissioner of Police remained unexecuted.

(Para 31)

Further held, that in the given facts and circumstances, accused-petitioners do not deserve any indulgence from the court as it is apparent that they seem to entertain a notion that law is to be flouted at their whims and fancies and is subservient to their cause. It would be a travesty of justice to accept the argument on behalf of Accused No.1

that he was in the process of availing his remedies, therefore, he cannot be termed an absconder or that by filing the petition under Section 482 Cr.P.C. challenging acceptance of the incomplete Challan/order dated 10.12.2021 or by filing the application under Section 70(2) Cr.P.C., the accused-petitioner had in fact submitted to the jurisdiction of the court.

(Para 32)

Vinod Ghai, Senior Advocate with Kanika Ahuja, Kirti Ahuja, Mahima Dogra, Advocates, *for the petitioner(s)* in CRM-M Nos. 21404, 19481, 19485 and 19489 of 2022 and 53680 of 2021, for respondent No.6 in CRM-M-52672 of 2021.

Suvir Sidhu, Advocate, *for the petitioner(s)* in CRM-M Nos. 21258, 21259, 21262 and 21264 of 2022.

Gaurav Garg Dhuriwala, Sr.D.A.G., Punjab.

C.M. Munjal, Advocate, for the complainant and *for the petitioner* in CRM-M No. 52672 of 2021.

LISA GILL, J.

(1) This order shall dispose of CRM-M No.53680 of 2021, CRM-M Nos. 21404, 19481, 19485, 19489, 21258, 21259, 21262 and 21264 of 2022 as well as CRM-M No.52672 of 2021. At request and with consent of learned counsel for the parties, all these petitions have been taken up together for hearing and decision as the same are intrinsically interlinked with each other arising out of FIR No.180 dated 10.07.2021, under Sections 376, 354, 354A, 506, 120B IPC, Police Station Division No.6, Ludhiana.

(2) It is relevant to note that FIR No.180 dated 10.07.2021 was registered on a petition under Section 156(3) Cr.P.C. filed by the complainant. Prayer in the said petition was for registration of FIR against seven (7) accused persons, namely, Simarjeet Singh Bains, Karamjeet Singh, Baljinder Kaur, Jasbir Kaur, Sukhchain Singh, Paramjit Singh, and Pardeep Kumar @ Gogi Sharma.

(3) As per allegations in the abovesaid FIR, Simarjeet Singh Bains (hereinafter referred to as 'Accused No.1') is a Member of Legislative Assembly in the State of Punjab as was his other brother, namely, Balwinder Singh Bains. Further, Accused No.1 is stated to be President of one political party, namely Lok Insaaf Party. Sukhchain Singh (hereinafter referred to as 'Accused No.5') is stated to have helped the complainant to purchase a house in January, 2018 for a

sum of Rs.18,00,000/-, out of which Rs.11,00,000/- was paid in cash by the complainant. Rs.10,00,000/- were secured from Vijaya Bank through Accused No.5. Sale-deed was executed on 09.03.2018 after the loan was approved. It is alleged that Accused No.5 misappropriated a sum of Rs.1,25,000/- as expenses for securing the loan. It is further stated that Accused No.5 arranged one election meeting for Accused No.1 at his residence on 26.04.2019 and on being invited, the complainant too attended the said meeting. Accused No.1 is stated to have called the complainant a number of times on the pretext of availing some telephone facilities as the complainant was working with 'Connect', a telephone company. Complainant's husband died on 01.02.2018 and her family's economic condition, it is stated, was weak and she defaulted in repayment of the loan installments. Bank staff is stated to have visited complainant's work place in the last week of June, 2019 and threatened to dispossess the complainant from the house. In August, 2018 when the bank was pressurizing the complainant, she is stated to have approached Accused No.1 for help, who informed the complainant that the broker, dealer and bank staff are all hand in glove with each other. Accused No.5, it is further stated, offered to pay Rs.4,50,000/- and one plot of 60 square yards in Jassowal as he did not have ready money. It is stated that complainant was advised by Accused No.1 to accept the offer being genuine. However, the complainant not wishing to build a house at Jassowal did not wish to accept the said offer, on which Accused No.5 did not come out with any viable solution except to say that she should take the plot and after sale of the same, the money would be handed over to her. Accused No.1, Simarjeet Singh Bains is stated to have asked the complainant to trust the dealer, Accused No.5 and in case of any subsequent problem, he would sort out the same. Complainant while reposing faith in Accused No.1 agreed to the same. Pursuant thereto, Accused No.5 took possession of the property from the complainant in the month of November, 2019 and procured one house on rent for her at the rate of Rs.5,000/- per month. Power of attorney was taken from the complainant in favour of accused No.5 on 13.09.2019 and he paid Rs.10,000/-. Thereafter a sum of Rs.4,40,000/- was paid by him. Complainant asked to sell the plot at Jassowal and release the payment to her, but the Accused No.5 kept putting off the matter. After the lockdown in the last week of March, 2020, financial position of the complainant is stated to have become very weak and she approached Accused No.1 on 04.08.2020 via telephone. It is alleged that Accused No.1 called her at his office and raped her, despite her resistance.

Accused No.1 is further stated to have told the complainant that she should submit to him and he shall secure the payment from Accused No.5 and also procure good work for her sons. He further threatened her that in case she revealed the incident to anyone, she would be removed from the face of the earth alongwith her family.

(4) Copious details alongwith dates have been mentioned in the complaint as to when and where the complainant was subjected to forceful act at the hands of Accused No.1 taking advantage of her situation. Complainant has narrated the manner and situation in which the complainant was exploited by the accused persons to her disadvantage, details of which are not necessary to be reproduced. It is alleged that complainant revealed her difficult situation to Accused No.3-Baljinder Kaur who was the Ward President of Accused No.1, but said accused after hearing details from the complainant deleted all the messages etc. from the complainant's cell phone by taking it away from her hand. There is a mention of recorded conversations with Accused No.3 on 21.09.2020. Complainant is alleged to have been called at the residence of Accused No.4- Jasbir Kaur @ Bhabhi on 29.09.2020 and 01.10.2020 and subjected to forcible act by Accused No.1, which is stated to be very well in the knowledge of Accused No.4. Complainant is stated to have been subjected to rape by Accused No.1 even in the presence of the twenty six year old son of Accused No.4. Complaint is stated to have been filed before the Chief Minister, Punjab on 20.09.2020. After submission of the complaint, there are allegations that complainant was pressurized to settle the matter by the police authorities as well. Complainant was subjected to threatening WhatsApp calls and video calls, besides obscene messages. Complainant's application was first disposed of vide order dated 24.12.2020 by the learned JMIC, Ludhiana directing it to be treated as a complaint. However, revision petition challenging the said order was accepted by the learned Additional Sessions Judge, Ludhiana on 07.06.2021 and the matter was remanded to decide it afresh, in accordance with law.

(5) Vide order dated 07.07.2021 passed by the learned JMIC, Ludhiana, the concerned Station House Officer (SHO) was directed to register a criminal case without any further delay while observing that keeping in view the nature of allegations, the complainant herself may not be in a position to produce and collect evidence before the court. Moreover, serious allegations requiring in- depth investigation have been raised against the accused who are at the helm of affairs.

Accordingly, FIR No. 180 dated 10.07.2021, under Sections 376, 354, 354A, 506, 120B IPC, Police Station Division No.6, Ludhiana was registered.

(6) An application was filed by the complainant in CWP-PIL No.29 of 2021 (Court on its own motion v. State of Punjab and others) wherein Division Bench of this Court (constituted in terms of order dated 16.09.2020 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No.699 of 2016), vide order dated 03.09.2021 observed that the State of Punjab shall be at liberty to appoint amore competent officer in the eventuality investigation is not proceeding further in right earnest. Pursuant thereto, Special Investigation Team was constituted forconducting investigation comprising the following officials:-

- 1) Mrs. Rupinder Kaur Bhatti, PPS, ADCP Investigation, Ludhiana,
- 2) Sh. Randhir Singh, PPS, ACP, Ind Area-B, Ludhiana,
- 3) SHO Division No.6, Ludhiana,
- 4) L/SI Kuljeet Kaur No.39/LPCT

(7) Challan/final report dated 08.11.2021 under Section 173 (2) Cr.P.C. in FIR No.180 dated 10.07.2021, under Sections 376, 354, 354A, 506, 120B IPC, Police Station Division No.6, Ludhiana was presented before the court on 10.11.2021. It is mentioned in the Challan that arrest of Accused No.1 who is the President of a political party and other accused persons, who are active members thereof, can disturb law and order keeping in view the rage of his supporters, therefore, accused in the present case be summoned in court. Learned Judicial Magistrate First Class, Ludhiana issuedailable warrants against the accused on 10.11.2021. Aailable warrants were received back unserved with the report of houses of some of the accused including that of Accuse No.1 to be locked and their neighbours stating that accused would be informed when back. Aailable warrants issued to Accused No.5 received back with a report that his wife informed about the accused having gone to Tarn Taran for a marriage. Learned Magistrate taking note of the inability/unwillingness of the police authorities to even arrest the accused as mentioned in the Challan itself, recorded its satisfaction that the accused were aware of the presentation of the Challan and issuance ofailable warrants with Accused No.1 openly conducting political rallies, hence their presence could be procured only through non-ailable warrants. Accordingly, non-ailable warrants were issued on 18.11.2021 to be executed through

Commissioner of Police as it appeared unlikely that the same could be executed through the concerned SHO.

(8) Application dated 18.11.2021 was submitted by Balwinder Singh Bains, brother of Accused No.1 upon which another Special Investigation Team was constituted on 26.11.2021 by the Deputy Inspector General of Police, Faridkot Range, Faridkot to conduct further investigation in the present FIR.

(9) Learned Judicial Magistrate First Class, Ludhiana, in the meanwhile, issued non-bailable warrants again on 01.12.2021 qua all the accused while observing that earlier non-bailable warrants issued qua the accused have been received back with the report that the accused were not found at their houses and they are absconding to avoid their arrest. Contention of the complainant that accused, Simarjeet Singh Bains was openly conducting political rallies and enjoying police security, was noted. Further contention that the accused are aware of pendency of the case and that service of the warrants was deliberately not effected by the police, was noted as well. Non-bailable warrants of arrest of accused persons were issued again to be served through the Commissioner of Police, Ludhiana for 10.12.2021.

(10) Station House Officer, Police Station Division No.6, Ludhiana filed an application before the learned Illaqa Magistrate on 10.12.2021 stating that DIG, Faridkot Range had constituted Special Investigation Team to conduct further investigation. Learned Magistrate on 10.12.2021 stayed any further investigation while observing that no further investigation can be carried out without permission of the court after filing of the Challan.

(11) **CRM-M No.52672 of 2021** was filed by the complainant seeking quashing of order dated 26.11.2021 issued by the Deputy Inspector General of Police, Faridkot Range, Faridkot wherein a Special Investigation Team has been constituted for further investigation. It is stated that once the final charge- sheet/Challan under Section 173 Cr.P.C. stands presented in court after completion of investigation, further investigation has been ordered illegally without permission of the court. Coordinate Bench issued notice of motion on 16.12.2021 and further investigation by said SIT was stayed.

(12) **CRM-M No.53680 of 2021** was filed by Accused No.1 seeking quashing of order dated 10.12.2021 passed by the learned Judicial Magistrate First Class (JMFC), Ludhiana whereby direction has been issued that the Special Investigation Team (SIT) shall not proceed

with any further investigation in the FIR, in question. Challenge is also laid to order dated 10.11.2021 whereby learned JMIC, Ludhiana is stated to have accepted an alleged incomplete Challan/final report under Section 173(2) Cr.P.C. There is a further prayer for stay of all proceedings arising out of the FIR, in question, with a direction to the respondents not to take any coercive action against the petitioner. While issuing notice of motion in this petition, this Court passed the following order on 21.12.2021:-

“Learned Senior counsel submits that order dated 10.12.2021 is per se unjustified, illegal and arbitrary as it was an incomplete challan which was presented under Section 173 Cr.P.C and it was specifically mentioned therein that in case any new fact/ solid evidence comes on record, then while considering the concerned aspect, further action as per law shall be initiated. Learned counsel for the petitioner relies upon the judgment passed by Hon’ble Supreme Court in “Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others” 2021(2) Law Herald (SC) 1419, to substantiate his argument, that investigation should not be scuttled. It is fairly brought to my notice by learned counsel for the petitioner that CRM-M-52672 of 2021 has been filed by the complainant challenging order dated 26.11.2021 whereby Special Investigation Team (SIT) was constituted for further investigation in the matter. Notice has been issued in the said petition and operation of order dated 26.11.2021 has been stayed. It is further submitted that passing of order dated 10.12.2021 which is impugned in this petition was intentionally not brought to the notice of the Coordinate Bench by respondent No.2 at the time of passing of order dated 16.12.2021.

Notice of motion.

Mr. Dhuriwala, Sr. DAG, Punjab accepts notice on behalf of the respondent. At the oral request of learned counsel for the petitioner, the complainant is impleaded as respondent No.2. Registry is directed to carry out necessary addition in the memo of parties. Notice be issued to respondent No.2 for 25.01.2022.”

(13) Accused No.1 preferred SLP (Crl.) No.802 of 2022 challenging order dated 21.12.2021 passed in CRM-M No.53680 of 2021 and also sought stay of his arrest keeping in view the assembly

elections being held in the State of Punjab. Arrest of Accused No.1 was initially stayed till 03.02.2022 by the Hon'ble Supreme Court and thereafter, it was extended for one week vide order dated 03.02.2022 in SLP (CrI.) No.802 of 2022. It is informed by learned counsel for the petitioner that SLP (CrI.) No.802 of 2022 filed by the petitioner has been dismissed as withdrawn on 18.05.2022.

(14) Accused No.1 in the interregnum also filed an application under Section 70(2)Cr.P.C. for cancellation of non-bailable warrants before the learned Illaqa Magistrate on the ground that the process was wrongly issued on the basis of incomplete Challan, not based on conclusion report of SIT with investigation being vitiated by bias and unfairness, conducted without associating the accused. Further directions for placing on record report of SIT and to investigate the matter fairly were sought. This application was taken up on 23.12.2021 and adjourned to 24.12.2021 for consideration. None appeared on behalf of the applicant on the said date and application was dismissed on 24.12.2021 being not maintainable. At the same time, learned Magistrate recorded its satisfaction that Accused No.1 was openly conducting public meetings with other accused being his supporters, still evasive reports are being sent about their non-availability, thus the accused were clearly avoiding service of process of court, therefore, proclamation was ordered. Learned Magistrate on 14.02.2022 while noting that SLP (CrI.) No.802 of 2022 before the Hon'ble Apex Court was pending, adjourned the matter for 25.02.2022 awaiting further orders. Fresh proclamation was issued on 25.02.2022 and ultimately all the accused-petitioners were declared proclaimed offenders on 12.04.2022.

(15) **CRM-M No.21404 of 2022** has been filed by Accused No.1 seeking anticipatory bail in FIR No.180 dated 10.07.2021, under Sections 376, 354, 354A, 506, 120B IPC, Police Station Division No.6, Ludhiana. Learned Additional Sessions Judge, Ludhiana disposed of the bail application of the petitioner vide order dated 12.04.2021 while observing that the question of grant of bail is pending before this Court as well as the Hon'ble Supreme Court, therefore, said application was not maintainable.

(16) CRM-M Nos.21258, 21259, 21262, 21264, 19481, 19485 and 19489 of 2022 have been filed for setting aside order dated 12.04.2022 passed by the learned Judicial Magistrate First Class, Ludhiana wherein the petitioners including Accused No.1 have been declared proclaimed offenders/persons in FIR No.180 dated

10.07.2021 under Sections 376, 354, 354A, 506, 120B IPC, Police Station Division No.6, Ludhiana.

(17) During the course of arguments and by way of CRM No.20156 of 2022 in CRM-M No.21259 of 2022, it was brought to notice that vide order dated 20.05.2022 learned Magistrate has ordered the term 'proclaimed offender' in order dated 12.04.2022 to be read as 'proclaimed person' being a clerical mistake. Correction was ordered as the error is stated to be apparent on the face of it.

(18) Learned counsel for Accused No.1 vehemently argued that said petitioner is being victimized in an unfair and unjustified manner merely because he is a public figure. Complainant at the first instance, it is submitted, never raised any allegations, whatsoever, against the said petitioner. Initially a complaint was filed on 05.10.2020 against Accused No.5 only reflecting a purely monetary dispute. It is further submitted that complainant, in fact, has settled the dispute with said Accused No.5 on 10.10.2020 before the ADCP-II, Ludhiana and the complaint was closed on 15.10.2020. It is stated that peculiarly a complaint was submitted on 16.11.2020 by the complainant with completely new and concocted facts with false and baseless allegations against Accused No.1, which are stated to be politically motivated. Learned counsel for the said petitioner strenuously argued that there is no substance in the allegations raised in this complaint and that the entire proceedings are a gross abuse of the process of law. Learned counsel submits that had there been any truth in the allegations, the same would have surfaced right in the beginning. Moreover, said allegations on the face of it do not inspire any confidence. Learned counsel further argued that order dated 12.04.2022 whereby the petitioner has been declared a proclaimed offender is illegal and deserves to be set aside. It was contended that the learned Magistrate has not applied its mind before passing order dated 12.04.2022. Learned counsel argued that first and foremost, acceptance of an incomplete Challan is an illegality in itself and thereafter issuance of process on the basis of said incomplete Challan cannot be countenanced. Due process in the case, it is submitted, has not been followed as the learned Magistrate seems to have been swayed by the sentiments of the complainant. Reference is made to orders dated 18.11.2021 and 01.12.2021 passed by the learned Judicial Magistrate First Class, Ludhiana to submit that observations that the accused are having knowledge of pendency of the present case as it is widely circulated on social media and leading newspapers, are not called for.

Adoption of coercive method by the court was not called for once there was no proper service upon the petitioner. There could not have been deemed service upon the petitioner. The court, it is submitted, was bound to have followed the proper procedure. It is further submitted that Accused No.1 had in fact submitted to the jurisdiction of the court. He is stated to have been availing his remedies as available. An application under Section 70(2) Cr.P.C. was filed by him on 23.12.2021 before the concerned court on the ground that process was wrongly issued on the basis of an incomplete Challan. Learned Magistrate, it is argued wrongly proceeded to issue the proclamation on 24.12.2021 i.e., the same day on which said application was dismissed.

(19) Learned counsel further argued that Accused No.1 and other accused, in any case, could not have been declared proclaimed offenders as the offences in question are not covered thereunder. Vide order dated 20.05.2022, learned Illaqa Magistrate on an application filed by the complainant proceeded to term the same as a clerical error and directed correction in order dated 12.04.2022 which, it is submitted, is impermissible in view of Section 362 Cr.P.C. It is submitted that FIR under Section 174A IPC already stands registered on the basis of order dated 12.04.2022, therefore, there cannot be any retrospective change in the terminology used in order dated 12.04.2022. It is submitted that once the procedure adopted by learned Illaqa Magistrate to declare the petitioner and accused persons as proclaimed offenders is illegal, petitioner's application for anticipatory bail is maintainable and should be considered in the facts and circumstances of the case.

(20) Learned counsel for the petitioner, in respect to the prayer in CRM No.53680 of 2021 submits that after constitution of Special Investigation Team headed by Mrs. Rupinder Kaur Bhatti, ADCP Investigation, Ludhiana she was transferred from the team. Investigation was never completed, but incomplete Challan was filed in haste by the SHO on 10.11.2021, subsequent to order dated 25.10.2021 in CWP-PIL No.29 of 2021 wherein the Division Bench observed that final report was expected to be submitted. Learned counsel refers to the Challan itself wherein it is stated that even after filing the Challan, in case new facts/solid evidence comes on record then while considering the said facts, further action as per law shall be initiated. It is submitted that due to this observation in the Challan, it is clear that the same is incomplete. The investigating agency, it is submitted, is still not clear about the matter itself. Learned Magistrate,

it is submitted, should not have taken cognizance of an incomplete Challan, especially when the matter is under the gaze of the High Court. It is, thus, prayed that acceptance of the incomplete Challan itself be set aside, consequently declaration of the petitioner to be a proclaimed offender/person be set aside and the petitioner be afforded the concession of anticipatory bail in this matter.

(21) Learned counsel for the accused-petitioners in the other petitions seeking quashing of orders declaring them proclaimed offenders/persons has adopted the arguments in this respect addressed on behalf of Accused No.1. It is further submitted that the said petitioners, in any case, are on different footing than Accused No.1 as there are no specific allegations against them. Petitioners have at no point been absconding or not willing to face the process of law. Learned counsel for the petitioners thus pray that all the petitions be allowed.

(22) Learned counsel for the complainant argued that complainant has had to face much difficulty at each and every step as the accused wield such great influence that even police authorities do not take action against them. It is submitted that the complainant being victim, is subjected to extreme harassment and threats at all times. The complainant had raised allegations at an earlier point of time as well, but the same were never recorded. The incident of 10.12.2020 is duly explained in the complaint itself. Complainant, it is stated, has been moving from pillar to post to seek justice after being exploited at the hands of Accused No.1 and his coterie. It is contended that there is no question of the Challan being incomplete. Mere statement that in case of any further evidence coming on record entailing further action as per law, does not in any manner lead to the conclusion of the Challan being incomplete. It is submitted that due process has been observed by the learned Magistrate for summoning accused persons, who have managed to evade the process of law with impunity. It is submitted that order dated 20.05.2022 does not in any manner take away the efficacy of order dated 12.04.2022. Nomenclature of 'Proclaimed Offender' or 'Proclaimed Person' for the present proceedings do not have any relevance and at best would be relevant in the proceedings under Section 174A IPC. It is thus prayed that all the present petitions be dismissed.

(23) Learned counsel for the State submits that Challan presented on 10.11.2021 was complete in all respects and it is by way of abundant caution that it is always stated in the Challan that in case of

any new evidence coming on record, further action would be initiated as per law. Learned counsel for the State on instructions ACP Rajesh Sharma, specifically stated that order dated 26.11.2021 issued by the Deputy Inspector General of Police, Faridkot Range, Faridkot constituting new SIT shall be withdrawn and there shall be no further investigation without permission of the court. It is thus prayed that all the petitions be dismissed.

(24) I have heard learned counsel for the parties at length and have gone through the record with their able assistance.

(25) Allegations in the FIR require no repetition. It is not in dispute that Accused No.1 is a public figure. He was, at the time of the registration of the FIR, a sitting Member of the Legislative Assembly of the State of Punjab and the President of a political party. Grave and serious allegations have been levelled in the FIR against the said petitioner and other accused-petitioners. Complainant has described in detail the repeated exploitation which she had to face at the hands of the accused persons. FIR in question was registered pursuant to order dated 07.07.2020 passed by the learned Judicial Magistrate First Class, Ludhiana. It is specifically observed in order dated 07.07.2021 as under:-

“With the clout accused No.1 and his cohorts carry their political sway would have dissuaded the police officials to extend an unbiased and judicious approach to the abuse. The cries of help by a proverbial common man against an overbearing and powerful political figure are often found to faint to be heard at certain forums. The complainant had been steadfastly pursuing the complaint against all odds and the extraordinary narrative of the sexual exploitation of the complainant indeed warrants a thorough investigation.

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At this juncture, it is germane to add that the evidence to be collected in this case is beyond the reach of the complainant. Moreover, custodial interrogation of accused appears to be indispensable for discovery of certain facts and for recovery of incriminating evidence. This court is of the affirmed view that nature of allegations is such that the complainant herself may not be in a position to collect and produce evidence before the court and interest

of justice demand that the police should step in to assist the complainant.”

(26) Special Investigation Team headed by Mrs. Rupinder Kaur Bhatti, ADCP, Investigation, Ludhiana was constituted after passing of order dated 03.09.2021 of the Division Bench of this Court in CWP-PIL No.29 of 2021. Learned counsel for the State has brought to notice that after Mrs. Rupinder Kaur Bhatti, ADCP Investigation proceeded on leave for 60 days, fresh team was constituted keeping in view the facts and circumstances, vide order dated 01.11.2021 consisting of the following officials:-

- 1) ADCP Security and Operation, Ludhiana
- 2) ACP IND Area-B, Ludhiana
- 3) SHO, Division No.6, Ludhiana
- 4) L/SI Kuljeet Kaur No.39/LPCT

Said Special Investigation Team considered the entire matter. Report dated 03.11.2021 submitted by the said Special Investigation Team was produced in Court wherein it is narrated that statement of the complainant and other witnesses stood recorded under Sections 161/164 Cr.P.C. Medical reports had been received. Call detail records etc. of the parties were collected. Investigation carried out by the earlier SIT was examined and on the basis thereof as well as the available evidence, it was recommended that Challan should be presented in court. Pursuant thereto, Challan dated 08.11.2021 was ultimately presented in the court on 10.11.2021. Perusal of the said Challan does not in any manner, indicate that the same is incomplete or that the investigating agency is not sure of its case against the accused. The factum of mentioning that in any new evidence coming on record would entail further action as per law, does not in any manner suggest incompleteness of the Challan. The same is only indicative of means to keep a channel open for further investigation in the event of any need or subsequent evidence coming to the fore. Needless to say, the same can be undertaken in accordance with provisions of law and after seeking permission from the Court. In my considered opinion, arguments raised on behalf of the accused-petitioners on this aspect are devoid of any merit, hence rejected.

(27) Question of order dated 10.12.2021 passed by learned Magistrate being dehors the provisions of law is rendered academic in view of the statement made by learned counsel for the State in Court, at the time of arguments, to the effect that order dated 26.11.2021 ordering the constitution of new SIT shall be withdrawn.

(28) Nevertheless, it is to be noted at this stage that Hon'ble Supreme court in *Vinubhai Haribhai Malaviya and others versus State of Gujarat and another*¹ and *Vinay Tyagi versus Irshad Ali and others*² has clearly held that prior leave of the court is required to conduct further investigation or to file supplementary report. In view of the statement made by learned counsel for the State, the matter is left at that.

(29) Learned counsel for Accused No.1 had vehemently argued that learned Judicial Magistrate First Class, Ludhiana has not adopted the correct procedure inasmuch as at the outset bailable warrants were issued on 10.11.2021, which was not necessary at all. Simple summons should have been issued at the first instance and thereafter too, learned Magistrate has been swayed by the sentiments of the complainant. However, I do not find any merit in this argument raised by learned counsel for the petitioner in this respect for reasons as delineated in the following paras.

(30) At this stage, it is pertinent to note an extremely surprising note in the Challan, which reads as under:-

“XX XX XX XX

Accused Simarjit Singh Bains is presently M.L.A. from Atam Nagar constituency, who is public representative. Who cannot abscond anywhere and rest of the accused persons are also active members of his party, their arrest can disturb the situation keeping in view of rage of his supporters and situation of law and order can be disturbed. Therefore, accused in the present case summon may be issued to the accused persons in the present case and may be summoned in the Court.”

(31) It is a matter of surprise that the police authorities felt powerless and ineffective in front of the ‘rage’ of the supporters of accused No.1 and so fearful of the law and order situation which they

¹ (2019) 17 SCC 1

² (2013) 5 SCC 762

perceived would be created in the wake of said petitioner's arrest, that the Challan was presented with a request to summon the accused in Court. In the given factual matrix, in my considered opinion, accused-petitioners are not at liberty to take any benefit of the shortcomings on the part of the investigating agency/police. Aforesaid is indeed a reflection on the clout which the said accused-petitioner was able to wield on the police authorities, which is further reflected from the fact that even the non-bailable warrants directed to be served through Commissioner of Police remained unexecuted.

(32) In the given facts and circumstances, accused-petitioners do not deserve any indulgence from the court as it is apparent that they seem to entertain a notion that law is to be flouted at their whims and fancies and is subservient to their cause. It would be a travesty of justice to accept the argument on behalf of Accused No.1 that he was in the process of availing his remedies, therefore, he cannot be termed an absconder or that by filing the petition under Section 482 Cr.P.C. challenging acceptance of the incomplete Challan/order dated 10.12.2021 or by filing the application under Section 70(2) Cr.P.C., the accused-petitioner had in fact submitted to the jurisdiction of the court.

(33) It is not in dispute that the process to secure the presence of an accused is succinctly provided in Chapter VI of the Code of Criminal Procedure. In the present case at each and every step, learned Magistrate has recorded the required satisfaction i.e., at the time of issuance of bailable warrants, non-bailable warrants as well as proclamation under Section 82 Cr.P.C.

(34) It is pertinent to note at this stage that while assailing order dated 12.04.2022 it is not the case of the petitioners that they were not aware of the issuance of non-bailable warrants by the trial court, rather the argument addressed is that procedure followed is incorrect and that service is not shown to have been effected as per law and that the learned Magistrate has not followed the proper procedure under Section 82 Cr.P.C. and that petitioners could not be declared proclaimed offender(s), therefore, order dated 12.04.2022 is illegal. Further argument is that correction vide order dated 20.05.2022 to term petitioners as proclaimed persons is illegal, therefore, the entire proceedings be set aside. In my considered opinion if the court succumbs to such niceties it would amount to affording petitioners the benefit of their own wrong and would make a mockery of the system. In the present case, there is complete absence of any prejudice much less grave prejudice being caused to the petitioner. All the petitioners

have avoided the process of law with impunity. It is apparent that petitioners were aware of the presentation of the Challan and issuance of warrants as it is a matter of record that a representation was submitted by the brother of Accused No.1, on the basis of which order dated 26.11.2021 was passed by Deputy Inspector General of Police, Faridkot Range, Faridkot ordering constitution of a fresh SIT even after presentation of the Challan.

(35) In respect to the argument on behalf of the petitioners regarding correction of order dated 12.04.2022 by the learned Magistrate vide order dated 20.05.2022 being a clerical error, it is gainful to refer to judgment of a coordinate Bench of this Court in *Smt. Deeksha Puri versus State of Haryana*³ wherein it is explained that the distinction between a proclaimed offender and a proclaimed person is relevant only insofar as Section 174A IPC is concerned. It has been observed as under:-

“37. A conjoint reading of sub-section 82 (4) Cr.P.C. with other subsections clarifies that “A statement in writing” by a Court issuing the proclamation to the effect that proclamation was duly published on specified day in the manner specified in clause (i) of Sub-Section 2 of Section 84 Cr.P.C. shall be “conclusive evidence” that requirement of Section 82 (1) and (2) Cr.P.C. have been complied with and that the proclamation was published on such day. But in case publication under Section 82 (1) Cr.P.C. is in respect of a proclaimed person accused of specified offences mentioned in Section 82 (4) Cr.P.C., it would be imperative for a Court to make an enquiry as it thinks fit for its satisfaction that an accused of any of the offences mentioned in Section 82 (4) Cr.P.C. has failed to appear at specified place and time required by the publication under Section 82 (10) and (2) Cr.P.C. That enquiry need not be a detailed enquiry but should be limited to the expression of opinion that Court is satisfied that the accused is absconding or concealing himself to avoid execution of warrants and that after proper publication of proclamation as per Sections 82 (2) (i) or (ii) Cr.P.C., has failed to appear at specified place and time after notice of thirty days. This safeguard is provided because stringent

³ 2013 (1) RCR (Cr.) 159

punishment is provided in Section 174 A Part II IPC.

38. But if a person is alleged to be offender under any other Section of IPC of any other law and has absconded by avoiding execution of warrants or proclamation he would be liable to lesser punishment under Section 174 A Part I IPC after publication of proclamation under Section 82(1) Cr.P.C. in manner mentioned in Section 82 (2) Cr.P.C. after statement in writing under Section 82 (3) Cr.P.C.

39. Section 82 (4) Cr.P.C. cannot be construed to hold that absconders not falling under Section 82 (4) Cr.P.C. cannot be declared proclaimed offenders or that they are not subject to the penalties and liabilities enshrined under law. The absconder not falling under Section 82 (4) Cr.P.C. are liable under Section 174A Part 1 IPC and absconders under Section 82 (4) Cr.P.C. are liable under Section 174 A Part II IPC after publishing of proclamation.

In view of above, it is held that provisions of Section 82 (4)Cr.P.C. incorporated by amendment of Act No.25 of 2005 do not lay down that the persons accused of having committed offences mentioned under Section 82 (4) Cr.P.C. can only be declared a proclaimed offender.

It is further held that any person who has been declared a proclaimed person under Section 82 (1) Cr.P.C. or under Section 82 (4) Cr.P.C. will be at par for the purpose of all the liabilities and consequences attached to a person declared proclaimed offender.”

Section 82 Cr.P.C. reads as under:-

“82. Proclamation for person absconding. – (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:--

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily

resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court- house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).”

(36) It is useful to reproduce Section 174A IPC at this stage, which reads as under:-

“174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.

– Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a

term which may extend to three years or with fine or with both, and where a declaration has been made under subsection (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.”

(37) It is observed in *Deeksha Puri's case (supra)* that when publication under Section 82(1) Cr.P.C. is in respect to a proclaimed person accused of specific offences mentioned in Section 82(4) Cr.P.C., an additional obligation is cast upon the court i.e., to make an enquiry as it thinks fit for its satisfaction that an accused of specified offences mentioned in Section 82(4) Cr.P.C. has failed to appear on specified place and time as required under Sections 82(1) and (2) Cr.P.C. Distinction between a proclaimed person under Section 82(1) Cr.P.C. and proclaimed offender under Section 82(4) is held only in the context of the mode of declaration of the absconder as proclaimed offender.

(38) It is a settled position that procedure is a handmaiden of justice. Therefore, in the present case where the petitioners clearly had knowledge about presentation of the Challan and issuance of process, they are not entitled to take up these pleas to keep avoiding the process of law in this brazen manner.

(39) It is a matter of record that petitioners did not apply for the concession of anticipatory bail in FIR No.180 dated 10.07.2021 at any time prior to filing of the Challan. Admittedly and in a peculiar fashion, the police authorities fearing the wrath of Accused No.1 and his supporters, did not proceed to arrest any of the accused.

(40) In SLP (Crl.) No.802 of 2022, interim relief sought is for stay of interim order dated 21.12.2021 passed in CRM-M No.53680 of 2021 as well as grant of anticipatory bail to the petitioner in connection with FIR No.180 dated 10.07.2021, Police Station Division No.6, Ludhiana on the ground that Accused No.1 had to contest the assembly elections. Specific stand has been taken by the said petitioner before the learned Additional Sessions Judge, Ludhiana while filing petition under Section 438 Cr.P.C. on 29.03.2022, that relief of anticipatory bail was being claimed for the first time. In CRM-M No.21404 of 2022 seeking anticipatory bail of Accused No.1, it is specifically mentioned that nature of relief claimed in CRM-M No.53680 of 2021 is different as is the nature of the prayer before the Hon'ble Supreme Court. SLP (Crl.) No.802 of 2022, it is informed, stands dismissed as withdrawn on

18.05.2022. It is a settled position of law that relief of anticipatory bail cannot be afforded to a person, who has been declared to be an absconder. Reference in this regard can be made to the judgments of the Hon'ble Supreme Court in *State of Madhya Pradesh versus Pradeep Sharma*⁴ and *Lavesh versus State (NCT of Delhi)*⁵.

(41) Contention of learned counsel that Accused No.1 joined investigation is negated by the information furnished by learned counsel for the State, who on instructions ACP Rajesh Sharma, had submitted that the said petitioner at no point of time was ever joined in investigation in this FIR. Argument that the petitioner was taken in custody in FIR No.19 dated 08.02.2022 during pendency of these petitions and then let off by the police on 08.02.2202 in the Bar Room of the Advocates, therefore, he cannot be termed as an absconder, is again devoid of any merit as it is duly explained by learned counsel for the State that said petitioner could not be taken in custody on 08.02.22 as interim bail had been afforded by the Hon'ble Supreme Court.

(42) Accused No.1 in CRM-M No.21404 of 2022 has admitted his involvement in as many as 26 criminal cases, in some of which he has been acquitted.

(43) Be that as it may, the same cannot afford a ground to the petitioner(s) to claim the relief as sought in these petitions. It does not explain as to why the petitioners never chose to appear before the learned trial Court being very well aware of the pendency of the proceedings. Petitioner – Accused No.1, as per his own stand in his petition under Section 438 Cr.P.C before the learned Additional Sessions Judge, Ludhaiana, had never at an earlier stage, sought the relief. The other petitioners at no stage had been in the process of availing any remedies available to them either.

(44) Learned counsel for the petitioners are unable to point out any illegality or infirmity in the impugned order dated 12.04.2022, as also order of even date declining anticipatory bail to petitioner-Simarjeet Singh Bains which has been correctly passed. Question of validity of order dated 10.12.2021 is rendered academic in view of the statement made by learned counsel for the State to the effect that order dated 26.11.2021 ordering constitution of the new Special Investigation Team shall be withdrawn. Needless to say, in case order

⁴ 2014 (2) SCC 171

⁵ 2012 (8) SCC 730

dated 26.11.2021 is not withdrawn parties are at liberty to file appropriate application(s).

(45) Accordingly, CRM-M No.53680 of 2021 as well as CRM-M Nos.21404, 19481, 19485, 19489, 21258, 21259, 21262 and 21264 of 2022 are dismissed. CRM-M No.52672 of 2021 is rendered infructuous. However, it is directed that in case petitioners appear before the learned Magistrate/trial court within one week of receipt of certified copy of the order, their applications for bail pending trial, if any, be decided expeditiously and definitely within one week thereof.

(46) It is clarified that observations in the order are confined for the purpose of decision of these petitions and are not an expression of opinion on the merits of the matter.

(47) Pending application(s), if any, are accordingly disposed of.

Shubreet Kaur