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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 1714/2020**

SANJAY TULSYAN

..... Petitioner

Through: Mr Roshan Santhalia and Ms Nikitha
Surabhi, Advocates.

versus

**STATE THROUGH NOMINATED
COUNSEL (CRIMINAL)**

..... Respondent

Through: Mr Amit Gupta. APP for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **28.08.2020**

[Hearing held through video conferencing]

CRL.M.A. 11753/2020

1. Allowed, subject to all just exceptions.

CRL.M.C. 1714/2020

2. The petitioner has filed the present petition, *inter alia*, impugning an order dated 08.01.2020, declaring the petitioner as a proclaimed offender under Section 82 of the Code of Criminal Procedure, 1973 (Cr.PC) passed by the learned CMM in FIR No.02/2018.

3. Mr Santhalia, learned counsel appearing for the petitioner submits that this Court has ample powers under Section 482 of the Cr.PC to quash the said order. He submits that the petitioner has moved the present petition

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only for the reason that learned CMM does not have powers to quash the said order. He submits that the said order was issued because the petitioner had not participated in the proceedings. He has since joined the proceedings and is fully co-operating with the investigation agency. He referred to the list of dates filed along with the petition and contended that the petitioner was fully cooperating with the investigating agency (EOW) prior to the registration of the FIR in question and even thereafter.

4. He submits that the petitioner had appeared before the Investigating Officer on 22.03.2018 (after the FIR was registered on 04.01.2018) and he had provided the information as sought for by the IO. However, thereafter for a brief period, the petitioner was not available and consequently, warrants were issued by the learned CMM on 14.10.2019. Thereafter, on 28.11.2019, the process under Section 82 of the Cr.PC was directed to be issued. The proclamation under Section 82 of the Cr.PC was duly published and by an order dated 08.01.2020 (which is impugned herein), the petitioner was declared as a proclaimed offender.

5. He submits that since on most occasions, the petitioner had complied with the directions of the IO, the impugned order ought to be quashed. He states that subsequently, the petitioner has joined the investigation and has fully cooperated with the IO. The petitioner has also filed an application for anticipatory bail and this court has passed an *ad interim* order restraining any coercive steps against the petitioner. He submits that in the aforesaid circumstances, it would be just and fair to quash the said order. He also referred to the decision of the Coordinate Bench of this Court '**Kulwant Singh v. Air Customs: 2004 (72) DRJ 200**', wherein this Court had quashed

the order declaring the petitioner therein to be proclaimed offender on the undertaking that he participates in the investigation.

6. The contention that the petitioner had evaded the processes only for a period of three months is not persuasive, as the list of dates filed along with the petition indicates that the last occasion when the petitioner joined the investigation prior to being declared as a proclaimed offender was on 22.03.2018. However, it is not necessary to examine that question in any detail as it is not disputed that for a certain period of time, the petitioner was not available and non-bailable warrants issued against the petitioner could not be executed. It is also not disputed that on 14.10.2019, arrest warrant was issued against the petitioner and that the same remained unexecuted. In the given circumstances, on 28.11.2019, the learned CMM passed an order issuing process under Section 82 of the Cr.PC on an application moved by the IO. The learned CMM cannot be faulted for issuing the said order. The proclamation was duly issued and thereafter, the learned CMM passed the impugned order on 08.01.2020, declaring the petitioner to be a proclaimed offender. This Court finds no ground to quash the said order.

7. The contention that notwithstanding that the impugned order declaring the petitioner to be a proclaimed offender cannot be faulted; this Court must exercise its powers under Section 482 of the Cr.PC to quash the same is, plainly, unsustainable.

8. The decision of the Coordinate Bench of this Court in ***Kulwant Singh*** (*supra*) is also of little assistance to the petitioner. It is seen that the said order is unreasoned and merely declares that the proceedings declaring the petitioner therein stands quashed. The factual background in which the

Court to pass that order is not reflected in the orders. Clearly, the said decision cannot be considered as an authority for the proposition that in all cases where the concerned person joins investigation after being declared a proclaimed offender, the order declaring him as such must be quashed.

9. The petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

AUGUST 28, 2020
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