

CRM-M-22372-2023
Date of decision: 14.12.2023

Versus

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. J.S. Gill, Advocate
for the complainant/respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking setting aside of impugned order dated 21.04.2022 (Annexure P-6) passed by the learned SDJM Bagha Puarana, whereby, the petitioner has been declared as proclaimed person/absconder in case bearing FIR No.84 dated 17.05.2018 under Sections 457/380/411 of IPC registered at Police Station Bagha Purana titled as '*State Vs. Jagdish Singh and others.*'

2. Learned counsel appearing for the petitioner *inter alia* contends that after registration of the FIR, the petitioner applied for anticipatory bail and vide order dated 01.06.2018, the petitioner was granted interim protection by the Court of learned Additional Sessions Judge, Moga and further vide order dated 27.07.2018, the interim protection was made absolute. Further vide order dated 11.12.2019, the charges for the offence punishable under Sections

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457/380 of IPC read with Section 34 of IPC were framed against the petitioner along with co-accused persons. He further submits that the petitioner is a citizen of Great Britain and during the trial of the said case, he sought permission to go abroad for a period of six months and vide order dated 16.03.2020 passed by the learned trial Court, he was granted permission to go abroad subject to furnishing the bank guarantee of Rs.2 lakhs. It is further submitted that because of the pandemic COVID-19, nationwide lockdown was imposed on 22.03.2020 and he was asked to return U.K. immediately being British Citizen. The petitioner had reached U.K. on 11.05.2020 but as he was required in a case of money laundering, therefore, the moment he reached there, he was arrested by the British Police and ordered to serve the sentence of four and a half years. It is further submitted that as the petitioner left for U.K. in an emergent situation, he could not furnish the bank guarantee as was required from him while leaving India. Further, considering his good conduct, he was released on license/probation vide order dated 22.09.2022 passed by the Secretary of State of Justice and as per the order dated 22.09.2022, the period of license/probation of the petitioner was to commence on 23.09.2022 and expire on 08.02.2025. The petitioner could not attend the Court proceedings as he was not present in India and therefore, he was declared as proclaimed offender vide order dated 21.04.2022 (Annexure P-6). Since, he was on probation in U.K., therefore, he requested his counsel to send the order of proclamation so that he could leave the country. He further submitted the representation to the British Authority and came to India. Aggrieved by the said impugned order dated 21.04.2022 (Annexure P-6), the petitioner has approached this Court by way of instant petition.

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3. Learned counsel appearing for the petitioner submits that the warrants issued to the petitioner were never served as he was confined in U.K. and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide impugned order dated 21.04.2022 (Annexure P-6), the petitioner has been declared as proclaimed offender. It is contended that the impugned order is liable to be set aside on the ground the trial Court has failed to appreciate that once the petitioner was in judicial custody in another country, his production warrants would have been issued and could not have been declared as proclaimed offender.

4. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

5. Notice of motion.

6. Mr. Madhur Sharma, AAG, Punjab, who is present in Court, accepts notice for respondent No.1 and filed status report dated 13.12.2023 which is taken on record and supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.

7. I have heard learned counsel for the parties and perused the record of the case with their able assistance and with the consent of parties, the matter is taken up for final disposal.

8. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests

of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

9. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing himself. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu Vs. State of Haryana 2021 (1) RCR (CrI.) 319***, it has been held that the conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

10. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioner in the present case has himself come forward and has undertaken to appear before the trial Court on each and every date.

11. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 21.04.2022 (Annexure P-6) vide which the petitioner was declared proclaimed offender, is hereby set aside.

12. The petitioner is directed to appear before the trial Court within a

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period of 60 days from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court.

(HARPREET SINGH BRAR)
JUDGE

14.12.2023
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No