

204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40303-2023
Date of decision: 14.12.2023

GURTEJ SINGH

...PETITIONER

V/S

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rahul Soi, Advocate for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of impugned orders dated 01.07.2023 (Annexure P-8) and 27.04.2023 (Annexure P-5) passed by Judicial Magistrate Ist Class, Patiala and all other subsequent proceedings vide which, the petitioner was declared as proclaimed person and non-bailable warrants were issued against him in a complaint case bearing No. COMA/5429/2017 dated 21.11.2017 under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') titled as ***Angrej Singh v. Gurtej Singh.***

2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Sections 138 of the Act was filed against the petitioner on the ground of dishonouring of cheque bearing No.014949 dated 01.09.2017, issued in favour of the complainant/respondent No.2 by the petitioner in discharge of his liability. The petitioner was served notice of accusation under Section 138 of the Act vide order dated 02.08.2018. Thereafter, on 27.04.2023, non-bailable warrants were issued against the petitioner for 10.05.2023, on account of receipt of report regarding bailable warrants issued

against the accused, the same was not received back. On 10.05.2023, the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner for 06.06.2023. On 01.07.2023, the trial Court declared the petitioner proclaimed person and further ordered to furnish the list of his property. Aggrieved by the said impugned orders dated 01.07.2023 (Annexure P-8) and 27.04.2023 (Annexure P-5), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the notice issued to the petitioner was never served and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Further, the trial Court vide order dated 10.05.2023 observed that since non-bailable warrants have not been executed till date, he cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C. for 06.06.2023. Ultimately, vide impugned order dated 01.07.2023, the petitioner has been declared as proclaimed person. It is contended that both the impugned orders are liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court.

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

5. Learned State counsel supports the orders 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, non-bailable warrants and proclamation were issued to secure his presence.

6. 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.

7. 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.

8. A perusal of the impugned orders reveals that the trial Court issued non-bailable warrants and 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 (Crl.) 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.

9. 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.

10. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to the respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2, the impugned orders dated 01.07.2023 (Annexure P-8) and 27.04.2023 (Annexure P-5), vide which, the petitioner was declared as proclaimed person and non-bailable warrants were issued against him, are set aside.

11. The petitioner is directed to appear before the trial Court within a period of 15 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, along with costs of Rs.10,000/- to be deposited with the Poor Patients Welfare Fund, PGI, Chandigarh for wasting precious time of the Court.

December 14, 2023
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |