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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M No. 46680 of 2023 (O&M)
Date of Decision: 04.12.2023**

Jatin Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ajay Nain, Advocate for
Mr. Ankur Bansal, Advocate
for the petitioner.

Mr. Gurlal Singh Dhillon, Assistant Advocate General, Punjab

HARKESH MANUJA, J.

By way of present petition under Section 482 of Code of Criminal Procedure, 1908, petitioner has sought quashing of the proclamation proceedings initiated against him including the issuance of non-bailable warrants of arrest vide order dated 31.05.2017 (**Annexure P-1**); order dated 09.11.2017 directing the issuance of proclamation (**Annexure P-2**) as well as the order dated 14.08.2018 (**Annexure P-3**) declaring petitioner as proclaimed offender, passed by the learned Judicial Magistrate 1st Class, Jalandhar in case arising out of FIR No. 222 dated 22.11.2014 under Sections 323, 324 & 34 of Indian Penal Code, 1860 (for short "IPC") and Sections 326, 380, 148 & 149 of IPC (added later on) registered at Police Station Maqsudan, District

Jalandhar (Rural).

[2] Brief facts of the case are that FIR in question was lodged on the statement of victim Gurpal Singh son of Surjit Singh under Sections 323, 324 & 34 of IPC at Police Station Maqsudan, District Jalandhar (Rural). Later on, Sections 326, 380, 148 & 149 of IPC were also added against the petitioner and his father. Petitioner thereupon applied for anticipatory bail before learned Additional Sessions Judge, Jalandhar and the same was granted vide order dated 21.02.2015 (**Annexure P-6**).

[3] After completion of the investigation, challan was filed on 30.03.2015 and charges were framed on 19.08.2015. During the trial, as on 31.05.2017 petitioner absented and his bail bonds were cancelled by the learned Judicial Magistrate 1st Class and non-bailable warrants of arrest were issued against him for 22.08.2017. Subsequently, as the presence of petitioner could not be secured, proclamation proceedings under Section 82 of Cr.P.C. were initiated against him vide order dated 09.11.2017 and ultimately vide order dated 14.08.2018, he was declared as proclaimed offender.

[4] Learned counsel for the petitioner, explaining the factual background of the case submits that as the matter stood compromised with the complainant, the petitioner was under impression that complainant will not pursue the FIR and will get the same quashed. Further, relying upon the entries made in the passport of petitioner, learned counsel submits that petitioner went to Dubai on 02.05.2017 to earn livelihood and came back to India on 21.10.2022 and, therefore,

there was no question for service of summons being effected upon him and thus, he did not evade the proceedings intentionally. He further submits that petitioner is now in India since 30.03.2023 and has joined the proceedings. In support, he relies upon the copy of passport of the petitioner, annexed as Annexure P-7 showing entries that petitioner has mostly remained in Dubai in the relevant duration.

[5] On merit, learned counsel for the petitioner, while relying upon judgment of the Hon'ble Supreme Court in ***“Inder Mohan Goswami and another vs. State of Uttranchal and others”***, reported as **2007 (12) SCC 1**, contends that learned Court instead of issuing summons or bailable warrants to the petitioner, straightaway proceeded to issue non-bailable warrants against him in a wholly unwarranted manner. He further submits that petitioner was neither served personally at any point of time nor was he in the knowledge of the proclamation proceedings initiated against him and accordingly, prays for the quashing of the same.

[6] Per contra, learned Counsel for the respondent-State submits that pendency of proceedings was in the knowledge of the petitioner, who left the country without informing the Court and has returned after so many years, cannot challenge the proceedings on the basis that no personal service was effected upon him.

[7] I have heard learned counsel for the parties and gone through the paper book of the case. Relevant part of order dated 31.05.2017 vide which non-bailable warrants were issued against the petitioner, is reproduced below:

“ Accused Jatin is on bail but remained absent today without any intimation. As such his bail bonds stands cancelled. NBW of arrest of accused be issued for 22.08.17.”

[8] In order dated 22.08.2017 (Annexure P-8), it is recorded that NBW of petitioner were not received back and therefore, fresh NBW were ordered to be issued for 09.11.2017. On 09.11.2017 (Annexure P-2), NBW were received back with the report that the accused was not residing at his residence and accordingly, Trial Court initiated the proceedings under Section 82 of Cr.P.C. for declaring the petitioner as proclaimed offender after recording its satisfaction that accused petitioner was evading arrest. The above order dated 09.11.2017 is reproduced hereunder:-

“ Nonailable warrants issued against the accused Jatin received back with the report that the accused is not residing at his residence and is evading arrest. Today the case file has been kept pending till 3.45 p.m., but the accused did not appear. Time and again process has been issued, but the same remained unexecuted with the reports of one nature or the others. This Court has reason to believe from the perusal of the reports that the accused is absconded. So, that warrants issued by this Court cannot be executed. This Court is satisfied that it is proper to resort to the procedure under section 82 Cr.PC to procure the presence of the accused. Therefore, written proclamation be issued requiring the accused to appear in this Court on 03.02.17.”

[9] Finally, vide order dated 14.08.2018 (Annexure P-3), petitioner was declared as proclaimed offender, which is reproduced hereunder:-

*“ Present: APP for the State.
Accused Angad on bail*

Accused Jatin PO

Today the case was fixed for awaiting presence of accused Jatin. The statutory period of thirty days has already been elapsed for the appearance of accused. Case called for several times since morning, but accused has failed to turn up. Accordingly, accused Jatin is declared proclaimed offender. Necessary intimation be sent to quarter concerned. PW Pooja is present but could not be examined and on her request, she is bound down for 12.09.18.”

[10] In ***Inder Mohan Goswami's case (supra)***, it was held by the Hon'ble Apex Court that if the presence of the accused could be ascertained by summons or bailable warrants, non-bailable warrants should not generally be issued. Relevant para of this judgment is reproduced hereunder:-

" When non-bailable warrants should be issued

49. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

**** it is reasonable to believe that the person will not voluntarily appear in court; or***

**** the police authorities are unable to find the person to serve him with a summon; or***

**** it is considered that the person could harm someone if not placed into custody immediately.***

50. As far as possible, if the court is of the opinion that a

summon will suffice in getting the appearance of the accused in the court, the summon or theailable warrants should be preferred. The warrants eitherailable or non-ailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.”

[11] Relying upon *Inder Mohan Goswami's case (supra)*, Co-ordinate Bench of this Court in "*Major Singh @ Major Versus State of Punjab*", reported as *2023(3) R.C.R.(Criminal) 406*, examined in detail the provisions of Chapter VI of Cr.P.C., which lays down the procedure relating to issuance of summons, warrants of arrest, proclamation and attachment including Sections 73 & 446 of the Code of Criminal Procedure. After detailed analysis, it was held by the Co-ordinate Bench that to draw a conclusion, the accused is evading his arrest, there must exist reasonable grounds and the Court is required to record its satisfaction that the presence of the accused cannot be secured by summons orailable warrants and there are valid grounds available on record to presume that the accused is willfully evading his arrest. Relevant para of this judgment is reproduced here under:

“ 9. The above composite order (Annexure P-5) was issued solely on the ground that the petitioner is an accused of nonailable offence. In a considered opinion of this Court, only because a person who is accused of nonailable offence will not satisfy the ground on which the Court can issue warrants of his

arrest, as per the provisions of Section 73 of the Code. If an accused is involved in a non bailable offence the warrants of arrest can only be issued if he is evading his arrest. A perusal of the impugned order (Annexure P-5) does not indicate in any manner that the petitioner is evading his arrest. The present FIR was registered on 15.07.2018, and the petitioner has been regularly appearing before the trial Court, the charges were framed against the petitioner on 30.08.2019 and he has attended the trial Court proceedings regularly and only on the ground of absence on one date, the learned trial Court instead of issuing bailable warrants, proceeded directly to issue non-bailable warrants. A perusal of the impugned order (Annexure P-5) indicates that the order was passed even without assigning any reasons or recording satisfaction that the petitioner is evading his arrest. This Court finds that to draw a conclusion that the accused is evading his arrest there must exist reasonable grounds and the Court is required to record its satisfaction that the presence of the accused cannot be secured by summons or bailable warrants and there are valid grounds available on record to presume that the accused is willfully evading his arrest.”

[12] Even with respect to the cancellation of bail, it was observed by the Co-ordinate Bench that it can be done only after providing an opportunity to the accused to explain why the bail granted to him should not be cancelled, which reads as under:-

“27. Learned trial Court is empowered under Section 439(2) and Section 437(5) of the Code to cancel the bail but such an order can only be passed after

issuance of notice to the accused to grant him an opportunity to explain why the bail granted to him, should not be cancelled. The impugned orders (Annexure P-5) vide which the bail of the petitioner was cancelled indicates no such recourse was taken by the learned trial Court. The forfeiture of the bonds can only be done on the ground of breach of condition imposed on the accused while granting bail. The impugned order (Annexure P-5) was passed solely on the ground that the accused has not appeared on 21.12.2022 before the trial Court. The mere absence of the petitioner on one date would not be sufficient to conclude that there is a willful breach of the conditions as provided under Section 446 of the Code.”

[13] A perusal of the factual matrix of the present case reveals that as the petitioner was absent on 31.05.2017, non-bailable warrants were issued against him for securing his presence and his bail bonds were cancelled. Issuance of non-bailable warrants, at the first instance, seems mechanical and disproportionate in the facts and circumstances of the present case and the Court ought to have pursued other prescribed procedure as held in above mentioned judgments. Even before cancelling the bail bonds, no efforts were made to grant the petitioner any opportunity to explain his absence.

[14] With respect to proclamation proceedings as well, I do not find that learned Trial Court proceeded in accordance with law, while declaring the petitioner as proclaimed offender under Section 82 of Cr.P.C. With respect to proclamation proceedings under Section 82 of

Cr.P.C., it was observed by the Co-ordinate Bench of this Court in ***Major Singh's case (supra)*** that the Trial Court is 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. Relevant part of the said order is re-produced hereunder:-

“ 23. A plain reading of Section 82(1) of the Code implies that the Court is first required to record its satisfaction before issuance of process under Section 82 and non recording of the satisfaction itself makes such order suffering from incurable illegality. This Court is prima facie satisfied that the impugned orders (Annexures P-5 and P-6) were passed in a mechanical manner without following the drill of the procedure prescribed under the Code. There is nothing on record which could remotely suggest that the learned trial Court has sufficient reasons to believe that the petitioner has absconded or he is intentionally concealing himself to avoid execution of the warrants and such departure from the mandatory compliance of Section 82(1) would render the impugned order (Annexure P-6) unsustainable in the eyes of law and the same is required to be quashed.”

[15] The non-bailable warrants issued on 22.08.2017 were not received back, while issued for 09.11.2017 were received back with the report that the accused was not residing at the given address. Merely on this report, Trial Court recorded its satisfaction that the accused-petitioner was evading arrest and initiated the proceedings under Section 82 of

Cr.P.C. When it was specifically recorded in the report that the accused was not residing at the given address, no efforts were made to find out his current and latest address and just on account of one failure in effecting service, satisfaction was recorded by the Trial court, without assigning any reasons. When petitioner was not present at the given address at the relevant period of time, as admittedly he had moved to Dubai for the purpose of earning his livelihood, efforts should have been made to find out his exact address through relatives or other appropriate sources and serve him at the address on which petitioner was residing at that time as envisaged under section 82(2)(i)(a) of Cr.P.C.; however, no such step was taken. But in the circumstance, when petitioner was not even in knowledge of the warrants issued against him, it cannot be held that he has been evading the proceedings of the Court by absconding or concealing himself so as to initiate the proceedings under Section 82 of Cr.P.C. against him.

[16] Therefore, in view of the ratio laid down in ***Inder Mohan Goswami's case (supra)*** and ***Major Singh's case (supra)***, as the non-bailable warrants were issued against the petitioner at the first instance, without taking recourse to other remedies, order dated 31.05.2017 (P-1) is liable to be set aside. Additionally, even the cancellation of his bail bonds was without affording any opportunity to the petitioner to explain the same, therefore, to this effect as well, the order dated 31.05.2017, is unsustainable. At the same time, for the reason that in the facts and circumstances of the present case, it cannot be held that the petitioner

absconded or concealed himself so as to evade the proceedings, therefore, proclamation proceedings initiated against him are also liable to be quashed.

[17] In view of the discussion held above, present petition is **allowed** and order dated 31.05.2017 (P-1) issuing non-bailable warrants against the petitioner and cancelling his bail bonds; order dated 09.11.2017 (P-2) directing the issuance of proclamation as well as the order dated 14.08.2018 (P-3) declaring the petitioner as a proclaimed offender, are quashed.

[18] However, in present case, casualness on part of petitioner also cannot be ignored as he left the country without informing or taking leave of the Court, despite knowing that criminal proceedings were pending against him, therefore, the above said order would be subject to payment of costs of Rs. 50,000/- to be deposited by the petitioner with the Punjab and Haryana High Court Association Lawyers' Family Welfare Fund having Account No.41564846387 with State Bank of India, High Court Branch, Chandigarh, within a period of two weeks from the date of receipt of certified copy of this order.

December 04, 2023

'dk kamra'

**(HARKESH MANUJA)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>