

CRM-M-50842-2023
Date of decision: 21.12.2023

Versus

State of Punjab and another ...Respondents

Present: Mr. Manmeet Singh Rana, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

2. Learned counsel appearing for the petitioner, *inter alia*, contends that with the intervention of the respectable persons of the family, a compromise has been effected between the parties vide compromise deed dated 26.06.2023 (Annexure P-2). He further submits that six trials were pending against the petitioner and in one of the cases, he could not appear before the learned trial Court and non-bailable warrants have been issued against him.

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I attest to the accuracy and
integrity of this order/judgment

same Court, therefore, he could not appear in rest of the cases and ultimately declared proclaimed person vide order dated 28.01.2019 (Annexure P-3). Aggrieved by the said impugned order dated 28.01.2019 (Annexure P-3), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the impugned order is liable to be set aside on the ground that the mandate of Section 82 Cr.P.C. has not been followed in its letter and spirit by the trial Court as the petitioner was convicted in two other cases bearing FIR No.221 dated 23.11.2010 and FIR No.265 dated 29.11.2012 under the Gambling Act when proclamation was issued against him. In support of his arguments, counsel for the petitioner relies upon the judgment passed by this Court in ***Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319*** and the judgment passed by the Gujarat High Court in ***Govindbhai Patel Vs. State of Gujarat 2004 (4) RCR (Criminal) 830***. It is further submitted that the petitioner undertakes to appear before the trial Court on each and every date and also the petitioner has entered into a compromise with the wife of the complainant, in proof of which, a compromise dated 26.06.2023 (Annexure P-2) is annexed with the present petition.

4. Notice of motion.

5. Mr. I.P.S. Sabharwal, DAG, Punjab who is present in Court accepts notice for the official respondents 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 against him to secure his presence.

6. At this stage, Mr. Sunpreet Singh, Advocate puts in appearance and accepts notice on behalf of respondent No.2 and filed power of attorney which

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is taken on record. Registry is directed to tag the same at an appropriate place in the file. He admits the factum of compromise effected with the petitioner.

7. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

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. 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 that the accused is intentionally concealing himself and his presence cannot be secured by any other means before issuance of process under Section 82 and non-recording of the satisfaction itself makes such order suffering from incurable illegality.

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 and the impugned order dated 28.01.2019 (Annexure P-3) vide which the petitioner was declared proclaimed person is hereby set aside.

The petitioner is directed to appear before the trial Court within a period of four

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weeks 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.3,000/- to be deposited with the District Legal Services Authority Jalandhar, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

21.12.2023
Neha

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