

**129 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-58260-2023
Date of decision: 20.11.2023

Kulwant SinghPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Raman Kumar, Advocate for
Mr. R.K. Kapila, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of order dated 15.03.2023 (Annexure P-5) vide which the petitioner was declared as proclaimed person in a case bearing FIR No.0123 dated 27.10.2017 under Sections 406/420 of IPC registered at Police Station Sadar Batala, District Batala.

2. Learned counsel for the petitioner contends that the petitioner was already on regular bail and, thereafter, he kept on appearing before the trial Court regularly, however, from 24.01.2022 to 10.08.2022, the petitioner was absent as he has noted wrong dates due to pandemic COVID-19 and on 24.01.2022 & 04.04.2022, the Court proceeded to issue bailable warrants against him in the sum of Rs.5,000/- and the case was fixed for 29.04.2022. On 29.04.2022, non-bailable warrants were issued against the accused/petitioner for 19.05.2022 and his surety bonds were forfeited to the State. On 19.05.2022, non-bailable warrants issued against the accused/petitioner was received back

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unexecuted and proclamation under Section 82 of Cr.P.C. was issued for 18.07.2022. On 18.07.2022, as per the report of Ahlmad, summons issued, were received back and the accused/petitioner was again summoned throughailable warrants in the sum of Rs.5,000/- for 10.08.2022. On 10.08.2022, petitioner had moved an application for surrendering before the learned trial Court and the proceedings under Section 82 of Cr.P.C. initiated against him, were recalled by the trial Court and he was released on fresh bail bonds of Rs.50,000/-. Thereafter, on 22.09.2022, the petitioner appeared before the learned trial Court and thereafter, from 22.09.2022 to 20.02.2023 he failed to appear as he was suffering from jaundice and was being given Ayurvedic treatment at home. On 15.03.2023, the trial Court declared the petitioner proclaimed person and further ordered to file the list of property of accused/petitioner. Aggrieved by the said impugned order dated 15.03.2023 (Annexure P-5), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the health of the petitioner was not well due to which he could not appear before the trial Court and, therefore, the finding of the trial Court that the petitioner is intentionally concealing, is erroneous. Further, the trial Court vide order dated 27.01.2023 observed that since non-ailable warrants have not been executed till date, he cannot be served through ordinary process and issued proclamation under Section 82 of Cr.P.C. for 20.02.2023. Ultimately, vide impugned order dated 15.03.2023, the petitioner has been declared as proclaimed person. It is contended that the impugned order is 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. Notice of motion.

6. Ms. Navreet Kaur Barnala, AAG, Punjab who is present in Court, accepts notice for the respondent-State 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 (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.

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 15.03.2023 (Annexure P-5) vide which the petitioner was declared proclaimed person is set aside.

12. 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 District Legal Services Authority, Gurdaspur, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

20.11.2023
Neha

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