

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

CRM-M-58739-2023
Date of decision: 21.11.2023

Gurjit SinghPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Satinder Kaur, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

This petition has been filed under Section 482 Cr.P.C. for setting aside of orders dated 01.07.2023, 16.08.2023 and 04.10.2023 (Annexures P-2, P-3 & P-4, respectively) and all other subsequent proceedings vide which non-bailable warrants as well as proclamation against the petitioner were issued in a case bearing No.787 of 2020 titled as 'State of Punjab Vs. Kulbir Singh' as he was summoned vide order dated 21.07.2022 in a case bearing FIR No.241 dated 14.11.2019 under Sections 307/392/427/323/148/149 of IPC and Sections 25/27 of Arms Act, 1959, registered at Police Station Dharamkot, District Moga (the petitioner along with other accused was declared innocent and Sections 307/392/148/149 of IPC were deleted in inquiry and Sections 325 & 336 of IPC added to other accused).

2. Learned counsel appearing for the petitioner, *inter alia*, contends that the petitioner was granted interim bail vide this Court's order dated 27.01.2020 (Annexure P-6) and the same was made absolute on 18.09.2020

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(Annexure P-7). On 21.07.2022, the petitioner along with other accused was summoned for 29.08.2022 to face trial for the offence under Sections 307/492/427/323/148/149 of IPC and Sections 25/27 of Arms Act. The petitioner came to know about the summoning orders few days back as he was never served due to wrong mentioning of the name of his village. He further contends that the complainant had intentionally given wrong address of the petitioner so that he is declared a proclaimed offender and when police takes him into custody, the complainant can forcefully get CWP No.2164 of 2020 titled as 'Gurjit Singh Vs. Union of India' withdrawn from the petitioner. On 01.07.2023 and 16.08.2023, non-bailable warrants were issued against the petitioner and the case was fixed for 04.10.2023 and on that date, the trial Court issued proclamation under Section 82 Cr.P.C. against the petitioner for 20.11.2023.

3. Learned counsel appearing for the petitioner submits that the non-bailable warrants issued to the petitioner were 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 04.10.2023 (Annexure P-4) observed that since non-bailable warrants have been received back unexecuted, he cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C. for 20.11.2023. It is contended 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.

4. Learned counsel for the petitioner also submits that the petitioner undertakes to appear before the trial Court on each and every date.

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5. Notice of motion.

6. Ms. Navreet Kaur Barnala, AAG, Punjab who is present in Court, accepts notice for the respondent and supports the impugned 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.

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

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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 orders dated 01.07.2023, 16.08.2023 and 04.10.2023 (Annexures P-2, P-3 & P-4, respectively) vide which the non-bailable warrants and proclamation were issued against the petitioner, are 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, Moga, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

21.11.2023

Neha

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