

Abhi @ RaviPetitioner

State of Haryana ...Respondent

Present: Mr. Sarun Hans, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

2. Brief facts of the case are that on 28.07.2021 at about 04:00 P.M. all the accused persons, namely, Parveen, Satbir, Rajesh, Monu, Mukesh and Abhi @ Ravi (the present petitioner) formed an unlawful assembly and were armed with deadly weapons and in pursuance of their common object voluntarily caused simple hurt to the complainant-Manish as well as to his friend, Robin.

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

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have any intention of not appearing before the trial Court as all other accused except the petitioner, have been acquitted on 26.10.2023.

4. He further submits that on 20.09.2022, 04.10.2022, 18.10.2022, 01.11.2022, 15.11.2022, 29.11.2022, 13.12.2022 and 10.01.2023, the learned trial Court issued non-bailable warrants against the petitioner and the case was fixed for 24.01.2023. On 24.01.2023, as per report, the warrants of arrest were received back unexecuted due to which the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner for 14.03.2023. On 14.03.2023, the trial Court declared the petitioner proclaimed person, in result of which, an FIR No.240 dated 23.08.2023 under Section 174-A of IPC registered at Police Station Bhattu Kalan (Annexure P-3) was got registered against him. Aggrieved by the said impugned order dated 14.03.2023 (Annexure P-1), the petitioner has approached this Court by way of instant petition.

5. Learned counsel appearing for the petitioner submits that the non-bailable warrants and proclamation issued to the petitioner were never served as the petitioner was occupied in taking care of his wife who was pregnant with her first issue and not able to take care of herself alone, therefore, petitioner was taking his wife regularly for medical check-up and other necessary medical tests 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 24.01.2023 observed that since non-bailable warrants received unexecuted till date, he cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C. for 14.03.2023. Ultimately, vide impugned order dated 14.03.2023, 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

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mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court. He further submits that the petitioner undertakes to appear before the trial Court on each and every date.

6. Notice of motion.

7. Mr. Gurmeet Singh, AAG, Haryana, who is present in Court, accepts notice for the respondent 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.

8. 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.

9. 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.

10. 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 (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.

11. 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.

12. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 14.03.2023 (Annexure P-1) vide which the petitioner was declared proclaimed person is hereby set aside.

13. The petitioner is directed to appear before the trial Court within a period of 15 days from the date of receipt of certified copy of this order 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.20,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

28.11.2023

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