

Love ...Petitioner

State of Punjab ...Respondent

Present: Mr. Ajay Pal Singh Rehan, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

2. Learned counsel appearing for the petitioner, *inter alia*, contends that the petitioner was arrested on 24.01.2018 under the NDPS Act and was granted bail by the learned Special Court on 26.02.2018 (Annexure P-1). Thereafter, the petitioner was regularly appearing before the trial Court. The charges were framed on 22.11.2018 and the case was fixed for prosecution evidence on 18.03.2019 but on that day and on further dates thereafter, no prosecution witness was present and the case was adjourned from time to time

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due to outbreak of COVID-19. On 06.09.2021 and 17.12.2021, the accused/petitioner had filed an application for exemption from personal appearance and the same were allowed for the respective dates. On 27.10.2022, 28.02.2023 and 13.09.2023, the accused/petitioner had again filed an application for exemption from personal appearance and the same were allowed for the respective dates and the case was fixed for 13.10.2023. The petitioner was telephonically and inadvertently informed by the clerk of his counsel that the next date of hearing before the trial Court is 23.10.2023 instead of 13.10.2023. On 13.10.2023, due to non-appearance of the petitioner, his bail order was cancelled and bail bonds/surety bonds stood forfeited to the State and he was summoned through non-bailable warrants for 08.11.2023. On 08.11.2023, the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner. Aggrieved by the said impugned orders dated 13.10.2023 (Annexure P-4) and 08.11.2023 (Annexure P-5), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the 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 observed that he cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C. It is contended that the impugned orders are 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 further submitted 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 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

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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 13.10.2023 (Annexure P-4) and 08.11.2023 (Annexure P-5), are hereby set aside.

12. 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.10,000/- to be deposited with the District Legal Services Authority, Hoshiarpur, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

28.11.2023
Neha

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