

CRM-M-62201-2023
Date of decision: 12.12.2023

Versus

State of Punjab ...Respondent

Present: Mr. Kunal Jain, Advocate for
Mr. Lakshay Bector, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 30.11.2023 (Annexure P-4) vide which the petitioner was declared as proclaimed offender in a case bearing FIR No.38 dated 28.02.2018 for the offence under Sections 399/402 of IPC and Sections 25/54/59 of Arms Act registered at Police Station Sudhar, District Ludhiana (Annexure P-1).

Learned counsel for the petitioner *inter alia* contends that on 25.01.2021 challan was presented in this case before the learned trial Court and the notice was issued to the accused persons for 12.02.2021. Thereafter, due to restricted working of the trial Court on account of the occurrence of COVID-19 pandemic, the trial Court had been adjourning the case and ultimately, on 24.01.2022, non bailable warrants was issued against all the accused including

CRM-M-62201-2023**-2-**

the petitioner. On 23.02.2023, 19.04.2023 & 25.05.2023 again, non-bailable warrants were issued against the petitioner for 20.07.2023 on account of non-receipt of non-bailable warrants earlier issued against the accused and notice to the IO and the complainant was also issued to furnish the list of property of the accused. On 20.07.2023, the trial Court issued proclamation against the petitioner for 24.08.2023. On 24.08.2023, the bail bonds/surety bonds of the accused/petitioner stood cancelled and forfeited to the State. On 30.11.2023, the trial Court declared the petitioner proclaimed offender. Aggrieved by the said impugned order dated 30.11.2023 (Annexure P-4), the petitioner has approached this Court by way of instant petition.

Learned counsel appearing for the petitioner submits that the 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. 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.

It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

Notice of motion.

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.

CRM-M-62201-2023

-3-

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.

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.

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.

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

CRM-M-62201-2023**-4-**

petitioner in the present case has himself come forward and has undertaken to appear before the trial Court on each and every date.

In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 30.11.2023 (Annexure P-4) vide which the petitioner was declared proclaimed offender, is hereby set aside.

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, Ludhiana, for wasting precious time of the Court.

Disposed off in above terms.

(HARPREET SINGH BRAR)
JUDGE

12.12.2023*Neha*

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