

CRM-M-64170-2023
Date of decision: 21.12.2023

Versus

2. Learned counsel appearing for the petitioners *inter alia* contends that petitioners were appearing before the learned trial Court on various dates but soon after the filing of challan, the Hon'ble Court went into restricted functioning due to which the case got delayed. Petitioner No.1 moved the medical certificate as he was taking treatment from Raksha Hospital, Gurgaon on the said date. Thereafter, on 29.05.2023, accused/petitioners have moved applications for exemption from their personal appearance but the same were dismissed on the ground that the accused/persons intentionally trying to delay

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the proceedings and their presence was secured through warrant of arrest for 25.09.2023. Notice to their sureties was also issued for the date fixed. On 25.09.2023, on account of receipt of report 'as unexecuted' regarding warrants of arrest issued against the petitioners, the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioners for 20.11.2023. On 20.11.2023, the trial Court declared the petitioners proclaimed persons and further ordered to provide the list of their properties. Aggrieved by the said impugned order dated 20.11.2023 (Annexure P-2), the petitioners have approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioners submits that the warrants of arrest issued to the petitioners were never served as they were suffering from COVID-19 and, therefore, the finding of the trial Court that the petitioners are intentionally evading their arrest, is erroneous. Further, the trial Court vide order dated 25.09.2023 observed that since warrants of arrest have not been executed till date, they cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C. for 20.11.2023. Ultimately, vide impugned order dated 20.11.2023, the petitioners have been declared as proclaimed persons. 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 petitioners undertake to appear before the trial Court on each and every date.

5. Notice of motion.

6. Ms. Geeta Sharma, DAG, Haryana, who is present in Court, accepts notice for the respondent and supports the order passed by the learned

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trial Court by contending that the petitioners do not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamations were issued to secure their 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 petitioners have absconded or are concealing themselves. 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

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a nullity.

10. The sole purpose of issuance of warrants of arrest or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioners in the present case have themselves come forward and have 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 20.11.2023 (Annexure P-2) vide which the petitioners were declared as proclaimed persons, is hereby set aside.

12. The petitioners are directed to appear before the trial Court within a period of 15 days from today and on their doing so, they shall be admitted to bail on their furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.10,000/- each, to be deposited with the District Legal Services Authority, Hansi, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

21.12.2023

Neha

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