

CRM-M-63606-2023
Date of decision: 18.12.2023

Versus

Ram Singh ...Respondent

Present: Mr. A.D.S. Sukhija, Advocate
for the petitioner.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of order dated 17.11.2022 (Annexure P-8), whereby, the petitioner has been declared as a proclaimed offender by the learned Court of Judicial Magistrate 1st Class, Patiala in a criminal complaint bearing No. COMI-52041 titled as 'Ram Singh Vs. Samat Singh and others' and further for quashing of order dated 09.09.2022 (Annexure P-4) passed by the learned JMIC, Patiala, whereby, non-bailable warrants have been issued against the petitioner.

2. Learned counsel appearing for the petitioner *inter alia* contends that the petitioner along with other accused was summoned to face trial vide order dated 09.07.2018 and the petitioner was regularly appearing before the learned trial Court till 25.05.2022. In the meantime, some talks regarding compromise had started between the accused persons/petitioner and the complainant. It is further alleged that petitioner got an opportunity to go abroad during this time and he went abroad under the belief that the matter had almost been compromised. He further submits that even the co-accused have also not

appeared on various dates before the learned trial Court and filed an application for exemption of their personal appearance but unfortunately, the petitioner was not advised to do so. On 09.09.2022, when the case was taken up before the learned trial Court, it was recorded that the compromise could not be effected between the parties and non-bailable warrants were issued against the petitioner only for 29.09.2022, though two other co-accused, namely, Yadwinder Singh and Manjit were also absent. On 29.09.2022, the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner for 05.11.2022. On 05.11.2022, it was recorded that the proclamation was duly effected on 12.10.2022 and the case was fixed for 14.11.2022 awaiting appearance of the accused/petitioner. On 14.11.2022, the case was again adjourned to 17.11.2022 for awaiting appearance of the accused/petitioner. On 17.11.2022, the trial Court declared the petitioner proclaimed offender. Aggrieved by the said orders dated 09.09.2022 (Annexure P-4) and 17.11.2022 (Annexure P-8), 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 as he went abroad under the belief that the matter has almost been compromised 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 29.09.2022 observed that since non-bailable warrants have not been executed till date, he cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C. for 05.11.2022. Ultimately, vide impugned order dated 17.11.2022, the petitioner has been declared proclaimed offender. 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 petitioner undertakes to appear before the trial Court on each and every date.

5. I have heard learned counsel for the petitioner and perused the record of the case with his able assistance and with his consent, the matter is taken up for final disposal.

6. 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.

7. 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.

8. 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.

9. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to the respondent in order to save time of the Court and to avoid litigation expenses to be incurred on the part of the respondent, the orders dated 09.09.2022 (Annexure P-4) and 17.11.2022 (Annexure P-8) vide which non-bailable warrants were issued against the petitioner and he was declared proclaimed offender, respectively, are hereby set aside.

10. 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 Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

18.12.2023
Neha

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