

**129 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-63700-2023
Date of decision: 18.12.2023

Chimniwala Fatema AbdulkadirPetitioner

Versus

State of U.T. Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.S. Nirmaan, Advocate
for the petitioner.

Mr. C.S. Bakhshi, Addl.P.P.,
for the respondent-U.T. Chandigarh.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of impugned order dated 28.04.2023 (Annexure P-11) passed by the learned Chief Judicial Magistrate, Chandigarh, arising out of the FIR No.0276 dated 24.10.2019 under Sections 420/120-B of IPC registered at Police Station Industrial Area, Chandigarh (Annexure P-1) vide which the petitioner was declared as proclaimed offender.

2. Brief facts of the case are that the petitioner was just an employee in the Air Wings Aviation Academy and she never had any sort of interaction with the clients of the Company with regard to the process of their visa. She never handled the finances of the Company and her role was just of an English Teacher who used to draw a salary of Rs.35,000/- per month. It is further alleged that the Director of Company and the main accused of the present case had themselves issued a certificate that the petitioner was just an employee in

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the Company and she was not responsible for any money related to the present FIR. The co-accused, namely, Neha Thakur, approached this Court and was granted concession of anticipatory bail vide order dated 24.09.2020 passed in CRM-M-19325-2020 titled as 'Neha Thakur Vs. U.T. Chandigarh.' Thereafter, the police filed an application before the learned Chief Judicial Magistrate, Chandigarh, for issuance of non-bailable warrants against the petitioner. On 18.04.2022, the petitioner was ordered to serve through non-bailable warrants for 01.06.2022. On 01.06.2022, the police again filed an application for issuance of second non-bailable warrants against the petitioner and the same was allowed and the petitioner was ordered to serve through non-bailable warrants of arrest for 04.07.2022. Thereafter, the police filed an application for issuance of proclamation against the petitioner and on 16.09.2022, the learned Chief Judicial Magistrate, Chandigarh issued proclamation against the petitioner under Sections 82/83 of Cr.P.C. for 09.11.2022. On 09.11.2022, the case was adjourned to 03.12.2022 awaiting appearance of the accused/petitioner. On 28.04.2023, the trial Court declared the petitioner proclaimed offender. Aggrieved by the said impugned order dated 28.04.2023 (Annexure P-11), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that inadvertently, the name of the petitioner is not mentioned in the order dated 28.04.2023 (Annexure P-11) vide which she was declared proclaimed offender and prays that the same be read accordingly.

4. Allowed as prayed for.

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5. 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 her arrest, is erroneous. Further, the trial Court vide order dated 16.09.2022 observed that since non-bailable warrants have not been executed till date, she cannot be served through ordinary process and issued proclamation under Sections 82/83 Cr.P.C. for 09.11.2022. Ultimately, vide impugned order dated 28.04.2023, the petitioner has been declared as proclaimed offender. It is further contended that even the warrants and proclamation issued were not executed, as the petitioner was not served with warrants and proclamation as the address on which the warrants and proclamation were issued was the address of the ex-husband of the petitioner. Petitioner got divorced from her husband in the year 2017, in proof of which, divorce document is annexed with the petition as Annexure P-12. The executing officer in his report mentioned that he reached at the address mentioned in the proclamation where the accused/petitioner was not found. The executing officer pasted a copy of the proclamation at given address, the second copy was pasted at the local bus stand and third copy on the notice board of the District Court and that the announcement of proclamation was also made in public. It is also contended that the pasting of proclamation by the executing officer on the given address where the accused/petitioner does not reside, cannot be considered to be a valid execution of the proclamation. In support of his arguments, counsel for the petitioner relies upon the judgment passed by this Court in *Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319* and the judgment passed by the Gujarat High Court in *Govindbhai Patel Vs. State of Gujarat 2004 (4) RCR (Criminal) 830*. It is also submitted that the

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

6. Notice of motion.

7. Mr. C.S. Bakhshi, A.P.P., U.T. Chandigarh, who is present in Court, accepts notice for the respondent and opposes the prayer made by learned counsel for the petitioner on the ground that the arguments advanced by counsel for the petitioner that the petitioner cannot be declared as proclaimed offender is liable to be rejected in view of the judgment passed by this Court in CRM-M-359-2012 'Smt. Deeksha Puri Vs. State of Haryana' decided on 16.10.2012 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 her 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

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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 herself. 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 herself 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 and keeping in view the fact that the petitioner is a woman and her co-accused, namely, Neha Thakur, has already been granted anticipatory bail, the present petition is allowed. The impugned order dated 28.04.2023 (Annexure P-11) vide which

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the petitioner was declared proclaimed offender, is hereby set aside.

13. The petitioner is directed to appear before the trial Court within a period of 15 days from today and on her doing so, she shall be admitted to bail on her 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