

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-64052-2023

Date of decision: 20.12.2023

ABHINAV SINGH

....PETITIONER.

Versus

STATE OF HARYANA AND ANOTHER

....RESPONDENTS.

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Ms. Promila Nain, Advocate with
Mr. Amit Thakur, Advocate for the petitioner.

SANJIV BERRY, J.(ORAL)

By way of present petition filed under Section 482 Cr.P.C., the petitioner has sought quashing of the impugned order dated 28.05.2019 (Annexure P-1) whereby the petitioner has been declared as proclaimed person in FIR No.252 dated 01.07.2017 registered under Section 381 of IPC, registered at P.S. Sector 5, Panchkula, District Panchkula (Annexure P-2).

2. It is, *inter alia*, contended by learned counsel for the petitioner that the petitioner after having been granted bail in the aforesaid FIR had been regularly appearing in the Court. When, during the course of proceedings, due to miscommunication of date, he could not appear and was marked absent and later ordered to be summoned throughailable warrants of arrest and finally with proclamation vide order dated 16.03.2019. She further submits that vide the impugned order dated 28.05.2019 (Annexure P-1), the petitioner was declared as proclaimed person in this case relying upon the statement of the Executing Official,

which was recorded on the same day and perusal of the statement (Annexure P-5) reveals that the proclamation was effected on 23.05.2019 and specified period of 30 days had not lapsed when the petitioner was declared as proclaimed person and therefore there is violation of provisions contained in Section 82 Cr.P.C. She contends that the petitioner is not facing any other criminal case.

3. Notice of motion.

4. On the asking of the Court, Ms. Gaganpreet Kaur, DAG, Haryana, who is present in Court, accepts notice on behalf of the respondent-State and submits that as per the information, there is no other criminal case registered against the petitioner.

5. Arguments heard.

6. After considering the rival contentions and perusing the record in the form of *zimni* orders placed on record by learned counsel for the petitioner, it transpires that the petitioner after having been arrested in the aforesaid FIR (Annexure P-2) was granted concession of bail and had been appearing in the Court. It is evident from the order dated 11.09.2018 (Annexure P-4) that the petitioner absented from the proceedings leading to cancellation of his bail and issuance of warrants of arrest.

7. As per learned counsel for the petitioner, the absence of the petitioner was not intentional, but due to some miscommunication of date for that day.

8. Further perusal of the orders placed on record reveals that on 16.03.2019, the warrants of the petitioner were received back unexecuted

and the learned trial Court proceeded to issue proclamation under Section 82 Cr.P.C. for 28.05.2019 and on that day, relying upon the statement of the Executing Official, the learned Court passed the impugned order declaring the petitioner as proclaimed person in this case.

9. During the course of hearing, the attention of the Court has been drawn to the statement of the Executing Official SPO Mahabir Singh, recorded by learned trial Court on 28.05.2019 (Annexure P-5) wherein he had categorically stated that on 23.05.2019, he had conducted search for the accused and also about his whereabouts and thereafter copy of proclamation was pasted on main gate of the house of the petitioner, another at the Bus Stand and one copy in the Court Complex. Therefore,, from the statement, it is revealed that the proclamation for the presence of the petitioner was effected by the Executing Official only on 23.05.2019 and the petitioner had been declared as proclaimed person in this case vide order dated 28.05.2019.

10. In the backdrop of above facts and circumstances, it would be relevant to refer to provisions of Section 82 Cr.P.C. which is read as under:

“82. Proclamation for person absconding.—(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

- (i) (a) *it shall be publicly read in some conspicuous place of the town or Village in which such person ordinarily resides;*
- (b) *it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;*
- (c) *a copy thereof shall be affixed to some conspicuous part of the Court-house;*
- (ii) *the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.*
- (3) *A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.*
- ¹*[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.]*
- ¹*[(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]”*

11. A bare perusal of Section 82 Cr.P.C. reveals that it is required

as per law that there should not be less than 30 days of time from the date of publication of the proclamation and proposed date of appearance in the Court, which in the present case, has not been adhered to. Therefore, the impugned order suffers from infirmity and hence, is liable to be set aside.

12. Resultantly, in the light of the above discussion, the present petition is allowed and the impugned order dated 28.05.2019 (Annexure P-1) passed by learned Chief Judicial Magistrate, Panchkula, is, hereby, set aside and the petitioner is directed to appear in the Court of learned Chief Judicial Magistrate/Duty Magistrate within 15 days from today and in the event of his arrest, he is ordered to be released on interim bail on his furnishing personal/surety bonds to the satisfaction of the trial Court. He shall also abide by conditions as envisaged under Section 438(2) Cr.P.C.

13. Disposed of.

(SANJIV BERRY)
JUDGE

20.12.2023
kanika

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |