

CRM-M-481-2024
Date of decision: 08.01.2024

Saroj RaniPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Govind Chauhan, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing/setting aside the impugned order dated 07.10.2023 (Annexure P-15) passed by the learned Additional Chief Judicial Magistrate, Karnal and all other subsequent proceedings vide which the petitioner was declared as proclaimed person in a case bearing FIR No.551 dated 25.05.2019 under Sections 406/420/506 of IPC registered at Police Station Sadar, District Karnal (Annexure P-2) and further seeking quashing of impugned order dated 22.04.2022 (Annexure P-11) vide which the bail of the petitioner before the learned trial Court was cancelled and bail bonds were forfeited to the State and warrants of arrest were issued.

2. Brief facts of the case are that the case was filed against the petitioner and co-accused-Parveen (husband of the petitioner) on the ground of dishonouring of cheques issued in favour of the complainant by the petitioner and co-accused in discharge of their liability. It is further alleged that on the

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asking of the money by the complainant, the petitioner and co-accused had threatened the complainant to implicate him in a false case.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has moved an application for anticipatory bail and by considering the fact that the petitioner has joined the investigation, the learned Additional Sessions Judge, Karnal vide order dated 03.01.2020 has granted anticipatory bail to the petitioner and further directions were issued that when the final report under Section 173 Cr.P.C. will be presented in Court, the petitioner will be permitted to furnish regular bail bonds to the satisfaction of the trial Court/Area Magistrate/Duty Magistrate. On presentation of challan, the petitioner appeared before the trial Court and submitted her bail bonds to the satisfaction of the learned trial Court. Thereafter, the petitioner was posted to Kalpana Chawla Government Medical College as a Lab Technician and started residing there. It is further submitted that when the petitioner was posted in Kalpana Chawla Government Medical College as a Lab Technician, she served the general public at large during the COVID-19 pandemic and even was got covid positive and, thereafter, due to consequence of Covid-19, she was not keeping good health and was suffering from various ailments. Thereafter, on 22.04.2022, presence of the accused/petitioner was secured through issuance of warrants of arrest for 27.10.2022 and bail of the petitioner was cancelled and bail bonds/surety bonds were forfeited to the State. On 27.10.2022, on non-receipt of warrants of arrest, fresh warrants of arrest were issued against the petitioner for 13.04.2023. On 13.04.2023, the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner for 07.10.2023. On

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07.10.2023, the trial Court declared the petitioner as proclaimed person. Aggrieved by the said impugned orders dated 22.04.2022 (Annexure P-11) and 07.10.2023 (Annexure P-15), the petitioner has approached this Court by way of instant petition.

4. Learned counsel appearing for the petitioner submits that the warrants of arrest issued to the petitioner were never served as she was posted in Kalpana Chawla Government Medical College as a Lab Technician and was residing there 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 13.04.2023 observed that since non-bailable warrants have not been executed till date, she cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C. for 07.10.2023. Ultimately, vide impugned order dated 07.10.2023, the petitioner has been declared as proclaimed person. 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.

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

6. Notice of motion.

7. Ms. Geeta Sharma, DAG, Haryana, 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 her presence.

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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 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

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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, the present petition is allowed. The impugned order dated 22.04.2022 (Annexure P-11) vide which the bail of the petitioner before the learned trial Court was cancelled and bail bonds were forfeited to the State and warrants of arrest were issued and order dated 07.10.2023 (Annexure P-15) vide which the petitioner was declared as proclaimed person, are 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 District Legal Services Authority, Karnal, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

08.01.2024
Neha

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