

Jaspreet SinghPetitioner

State of Punjab ..Respondent

Mr. Subhash Godara, Addl.A.G., Punjab.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing the order dated 01.12.2021 (Annexure P-5) passed by the learned Chief Judicial Magistrate, Moga in case bearing FIR No.31 dated 07.02.2018 under Sections 325/323/34 of IPC (Anneuxre P-1), whereby, the petitioner has been declared as proclaimed person.

2. Learned counsel appearing for the petitioner *inter alia* contends that the petitioner was absented from the trial during the covid period and went abroad as his file has matured and his studies were suffering due to pendency of this false case. On 05.08.2021, on account of non-appearance of the accused/petitioner, the learned trial Court issued non-bailable warrants of arrest against the petitioner for 19.08.2021. On 19.08.2021, the learned trial Court issued proclamation against the petitioner under Section 82 Cr.P.C. for 15.09.2021 and ultimately, on 01.12.2021, the trial Court declared the petitioner as proclaimed person. Aggrieved by the said impugned order dated 01.12.2021

(Annexure P-5), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the impugned order is liable to be set aside on the ground that the mandate of Section 82 Cr.P.C. has not been followed in its letter and spirit by the trial Court. It is further submitted that it is a settled law that when the accused is residing in a foreign country, attempt is to be made to serve summons upon him through the Ministry of External Affairs and in the present case, no such attempt has been made. 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 further submitted that the petitioner undertakes to appear before the trial Court on each and every date.

4. Notice of motion.

5. Mr. Subhash Godara, Addl.A.G., Punjab, 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 his presence.

6. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

7. 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.

8. As far as possible, presence of the accused in the eventuality of his non-appearance ought to be secured by issuing summons or bailable warrants and non-bailable warrants/proclamation should not generally be issued. A perusal of the impugned order reveals that the trial Court without issuing summons or bailable warrants straight away issued proclamation, much less, 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 and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu's case*** (supra), it has been held that prior issuance of warrant of arrest by the Court is *sine qua non* for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. 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.

9. 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.

10. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 01.12.2021 (Annexure P-5) vide which the petitioner was declared proclaimed person is hereby set aside. The petitioner is directed to appear before the trial Court within a period of 08 weeks 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 District Legal Services Authority, Moga, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

19.01.2024
Neha

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