

Sarabjit Singh @ ManiPetitioner

State of Punjab ...Respondent

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

HARPREET SINGH BRAR, J. (ORAL)

2. Learned counsel appearing for the petitioner *inter alia* contends that the petitioner was regularly appearing before the learned trial Court, however, on 18.07.2023, he failed to attend the trial Court proceedings as the judicial complex was shifted to new judicial complex and due to this confusion, he could not appear before the learned trial Court and when he reached at new Judicial Complex after 12 Noon, then his counsel informed him that due to his absence, his bail order was cancelled and his bail bonds/surety bonds were forfeited to State and the petitioner was ordered to be summoned through non-

bailable warrants of arrest for 05.10.2023. On 05.10.2023, the trial Court issued proclamation of the petitioner in a mechanical manner and report was called for 11.12.2023. On 11.12.2023, the Presiding Officer was on leave and the case was adjourned for 09.01.2024. It is further submitted that the learned trial Court declared the petitioner as proclaimed offender on 09.01.2024 (Annexure P-5). Aggrieved by the said impugned order dated 09.01.2024 (Annexure P-5), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the petitioner was never served with any bailable warrants, non-bailable warrants or even any proclamation and as per the statement suffered by the serving constable, at the time of effecting proclamation, he did not meet the petitioner at the given address and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide impugned order dated 09.01.2024, the petitioner has been declared as 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 of hearing.

5. Notice of motion.

6. 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.

7. 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.

8. 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.

9. 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 (Crl.) 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.

10. 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 of hearing.

11. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 09.01.2024 (Annexure P-5), vide which the petitioner was declared as proclaimed offender, is hereby set aside.

12. The petitioner is directed to appear before the trial Court within a period four weeks from today and on his doing so, he shall be admitted to bail on his furnishing the adequate 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, Hoshiarpur, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

19.01.2024
Neha

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