



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

CRM-M-4522-2024

Date of decision: 24.07.2024

Mandeep Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Narinder S. Lucky, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 05.11.2020 (Annexure P-5) passed by the learned Judicial Magistrate 1st Class, Jalandhar, in case bearing No.CHI-146-2022 filed on 08.02.2022 titled as 'State of Punjab Vs. Ajaypal Singh' in case bearing FIR No.123 dated 09.08.2013 under Sections 406/498-A of IPC registered at Police Station Bhogpur, District Jalandhar, vide which the petitioner has been declared as proclaimed person.

2. Learned counsel appearing for the petitioner *inter alia* contends that the petitioner was granted interim bail vide order dated 21.12.2017. Vide order dated 16.12.2019, the application seeking modification of order dated 21.12.2017 was dismissed. On 03.02.2018, one un-trace/Closure Report was filed by the State bearing No. UCR-41-2018 before the learned trial Court. Thereafter, the petitioner failed to appear in the UCR case and hence, notice to her was issued on 02.01.2019 and summons were issued to her on 04.02.2019,

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26.03.2019, 20.04.2019, 14.06.2019. Thereafter, bailable warrants were issued against the petitioner on 29.07.2019, 07.09.2019 and 02.11.2019. On 09.12.2019, on account of receipt of report as 'unserved' regarding issuance of bailable warrants, non-bailable warrants were issued against the petitioner for 17.01.2020 and on 17.01.2020, on account of receipt of report as 'house locked', the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner for 17.02.2020. On 05.11.2020, the trial Court declared the petitioner proclaimed person. Aggrieved by the said impugned order dated 05.11.2020 (Annexure P-5), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the non-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 17.01.2020 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.. Ultimately, vide impugned order dated 05.11.2020, 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.

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

5. Notice of motion.

6. Mr. Sandeep Kumar, DAG, Punjab, who is present in Court, accepts notice for respondent No.1 and files status report by way of an affidavit



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which is taken on record. He further 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.

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 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

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‘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 herself come forward and has undertaken to appear before the trial Court on each and every date.

11. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2 and the impugned order dated 05.11.2020 (Annexure P-5) vide which the petitioner was declared as proclaimed person, is hereby set aside.

12. The petitioner is directed to appear before the trial Court within a period of six weeks 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.

13. The receipt of payment of costs imposed must be presented before the learned trial Court. The learned Court below is directed to grant bail to the petitioner only upon verification of the payment of said costs.

(HARPREET SINGH BRAR)
JUDGE

24.07.2024*Neha*

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