

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-6690 of 2024
Date of Decision: February 08, 2024

Gurwinder Singh @ Sunny
.....Petitioner

versus

State of Punjab
.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Mohit Kumar, Advocate
for the petitioner

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

Harpreet Singh Brar, J. (Oral)

1. The petitioner has approached this Court under Section 482 Cr.P.C. seeking quashing of impugned order dated 15.04.2023 (Annexure P-3) vide which the petitioner was declared as proclaimed person in case FIR No. 0130 dated 11.12.2000 registered under Section 61 of the Punjab Excise Act, 1914 (Section 69 of Punjab Excise Act added later on) at Police Station Sandaur, District Malerkotla (Annexure P-1) and all subsequent proceedings arising therefrom.
2. Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the aforementioned FIR and he has been nominated on the basis of disclosure statement of the co-accused Paramvir Singh @ Pamma. The petitioner was released on bail by the learned trial Court on 13.01.2021 and since then he was regularly appearing and participating in the proceedings before the Court. He further submits that the petitioner was declared as proclaimed offender vide order dated 15.04.2023 despite the fact that no proclamation was

done at his residence. Learned counsel further submits that the impugned order is liable to be set aside on the sole ground that the petitioner is not habitual offender and is ready to appear on each and every date of hearing before learned lower Court.

3. Notice of motion.

4. Mr. Subhash Godara, Addl. A.G. Punjab accepts notice on behalf of the respondent-State.

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

6. 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.

7. 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 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 in nature. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the

proclamation as nullity.

8. 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.

9. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 15.04.2023 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 four 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 PGI Poor Patients Welfare Fund, Chandigarh. for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

February 08, 2024

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No