

CRM-M-9729-2024
Date of decision: 26.02.2024

Ranjit Singh alias KakaPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Harnaaz Kaur Hundal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of zimini order dated 05.01.2024 passed by the learned Additional District and Sessions Judge, Jalandhar, whereby, the petitioner was declared as proclaimed offender in case bearing FIR No.0047 dated 02.04.2019 under Section 21 of the NDPS Act (61 of 1985) registered at Police Station Mehatpur, District Jalandhar Rural.

2. Learned counsel appearing for the petitioner *inter alia* contends that the first petition i.e. CRM-M-7396-2024 was dismissed for non-prosecution as on 13.02.2024, counsel for the petitioner could not appear before this Court because of the ongoing agitation and resultantly, the blockage of roads.

3. She further contends that the petitioner was regularly appearing before the learned trial Court and attending hearings since 2019 to 2023. On 20.09.2023, notice to the accused/petitioner was issued for 12.10.2023. On 12.10.2023, due to his non-appearance, his bail was cancelled and bail

bonds/surety bonds were forfeited to the State and he was summoned through non-bailable warrants of arrest for 10.11.2023. On 10.11.2023, proclamation was issued against him under Section 82 Cr.P.C. for 05.01.2024. She further contends that on account of non-appearance of the accused petitioner, the trial Court declared him as proclaimed offender vide order dated 05.01.2024. Aggrieved by the said impugned order dated 05.01.2024, the petitioner has approached this Court by way of instant petition.

4. Learned counsel further submits that the petitioner has not absented himself willfully as there were unnatural floods in the area where he resides and many areas were cut off physically due to which basic network was also affected negatively, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide impugned order dated 05.01.2024, 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. In support of her 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***.

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

6. Notice of motion.

7. Mr. Sandeep Kumar, DAG, Punjab who is present in Court accepts notice on behalf of the respondent-State 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.

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. 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. 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 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.

12. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 05.01.2024 vide which the petitioner was declared as proclaimed offender is hereby set aside.

13. 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, Jalandhar, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

26.02.2024
Neha

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