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

CRM-M-9882-2024

Date of decision: 26.02.2024

Gurpreet Singh

....Petitioner

Versus

## State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

**Present:** Mr. Barjinder Singh, 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/setting aside of impugned order dated 30.09.2023 (Annexure P-1) passed by the learned Sub Divisional Judicial Magistrate, Moonak, whereby, the petitioner was declared as proclaimed offender in case bearing FIR No.125 dated 16.10.2016 under Sections 61/1/14 of Excise Act, 1914 registered at Police Station Moonak.

2. Learned counsel appearing for the petitioner contends that the petitioner was on bail and was regularly appearing before the Investigating Officer. Further, during COVID-19 pandemic, police presented challan before the learned trial Court on 16.12.2020 and notice was sent to the petitioner for 06.04.2021 about which the petitioner was not aware. Thereafter, various notices were issued to the petitioner which were not served, on account of which, bailable warrants for the sum of Rs.10,000/- with one surety in the like amount was issued against him for 24.08.2021. On 24.08.2021, again fresh bailable warrants were issued against him for 06.10.2021. On 06.10.2021,

09.12.2021, 31.01.2022 & 07.03.2022, non-bailable warrants were issued against the petitioner and due to his non-appearance, on 02.05.2022, 16.07.2022, 23.08.2022, 03.09.2022, 15.10.2022, 03.12.2022, 27.01.2023, 18.03.2023, 08.05.2023, 21.07.2023 & 19.08.2023, the learned trial Court issued proclamations under Section 82 Cr.P.C. against the petitioner. Ultimately, the learned trial Court vide order dated 30.09.2023 (Annexure P-1) declared the petitioner as proclaimed person. Aggrieved by the said impugned order dated 30.09.2023, 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 any proclamation, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide impugned order dated 30.09.2023, 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. 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***.

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. 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.

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. 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.

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 30.09.2023 (Annexure P-1) 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 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 Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

(HARPREET SINGH BRAR)  
JUDGE

26.02.2024  
Neha

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