

CRM-M-12595-2024
Date of decision: 12.03.2024

Balwinder Kaur BawaPetitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. G.S. Verma, Advocate
for the petitioner.

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

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 02.09.2022 (Annexure P-4) passed by the learned Judicial Magistrate 1st Class, Balachaur, District SAS Nagar in case bearing FIR No.35 dated 20.08.2019 under Section 420 of IPC and Section 13 of Punjab Travel Professional Regulation Act, registered at Police Station Pojjewal District SBS Nagar (Annexure P-1), whereby, bail bonds/surety bonds of the petitioner have been cancelled and forfeited to the State followed by non-bailable warrants of arrest and further quashing of order dated 30.11.2022 (Annexure P-6) passed by the learned Judicial Magistrate 1st Class, Balachaur, District SAS Nagar, whereby, the petitioner has been declared as proclaimed offender.

2. Learned counsel appearing for the petitioner *inter alia* contends that the petitioner was on regular bail and she was appearing before the learned trial Court but on 02.09.2022, she could not appear before the learned

trial Court as wrong date was noted down by her and on the previous date, neither her counsel nor the clerk of counsel has informed her about the next date of hearing, on account of which, her bail bonds/surety bonds were cancelled and forfeited to the State and non-bailable warrants of arrest along with notice to her surety were issued for 11.10.2022. On 11.10.2022, the learned trial Court issued proclamation under Section 82 of Cr.P.C. against her for 19.11.2022. On 30.11.2022, the trial Court declared the petitioner as proclaimed offender. Aggrieved by the said impugned orders dated 02.09.2022 (Annexure P-4) and 30.11.2022 (Annexure P-6), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the petitioner could not appear on 02.09.2022 due to her act of noting the wrong date of hearing and, therefore, the non-bailable warrants issued to the petitioner 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 11.10.2022 observed that since non-bailable warrants of arrest have been received back with a report that the accused evading her arrest intentionally and concealed herself for apprehension of arrest, she cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C.. Ultimately, vide impugned order dated 30.11.2022, 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.

5. Notice of motion.

6. Mr. Subhash Godara, Addl.A.G., Punjab, who is present in Court, accepts notice for respondent No.1 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 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.

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 orders dated 02.09.2022 (Annexure P-4) and 30.11.2022 (Annexure P-6) vide which the bail bonds/surety bonds of the petitioner have been cancelled and forfeited to the State followed by non-bailable warrants of arrest and the petitioner was declared as proclaimed offender, respectively, are hereby set aside.

12. The petitioner is directed to appear before the trial Court within a period of 15 days 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.

(HARPREET SINGH BRAR)
JUDGE

12.03.2024
Neha

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