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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-13503-2024 (O&M)
Date of decision: 23.09.2024

Lovepreet Singh @ Love ...Petitioner

Versus

State of Punjab ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Hitesh Verma, Advocate
For the petitioner.

Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of order dated 08.02.2024 (Annexure P-3), passed by the Sub Divisional Judicial Magistrate, Baba Bakala Sahib in case titled as *State vs. Bhupinder Singh*, arising out of FIR No. 16 dated 22.01.2022, registered under Sections 323, 452, 427, 34 of IPC at Police Station Beas, District Amritsar, whereby the petitioner had been declared a proclaimed person.

2. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the aforementioned FIR was registered against one Bhupinder Singh and one unknown person. After completion of investigation, *challan* was presented against accused Bhupinder Singh. However, during the pendency of trial, an application under Section 319 of Cr.P.C. was moved by the prosecution, which was allowed, vide order dated 09.05.2023, and the petitioner was summoned to face the trial. It is

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further argued that the petitioner had been declared a proclaimed person without following the proper procedure prescribed under Section 82 Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

3. Learned State counsel, in terms of the reply filed today in Court, has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the trial Court. Therefore, he was rightly declared a proclaimed person. Hence, it is urged that the petition is liable to be dismissed.

4. I have heard learned counsel for the parties and have also gone through the material placed on record.

5. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the trial Court from the date of initiating proceedings under Section 82 Cr.P.C. as against the petitioner till the date of declaring him a proclaimed person, I am of the considered opinion that the impugned order dated 08.02.2024 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

6. There are catena of judgments of different High Courts discussing the requirements necessary for issuance and publication of proclamation against an absconder under Section 82 Cr.P.C. and for declaring him as a proclaimed person/offender. These requirements have been discussed from time to time in ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561***, ***Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366***, ***Devender Singh Negi Vs. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783***, ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826, Shokat Ali***

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Vs. State of Haryana : 2020(2) RCR (Criminal) 339, Dilbagh Singh Vs. State of Punjab : (P&H) 2015 (8) R.C.R. (criminal) 166, Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550, Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368, Birad Dan Vs. State : 1958 CriLJ 965, Negi alias Debu Vs. State of U.P. and another, 1994 Cri LJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318.

7. After going through the material placed on record as well as the copies of zimini orders passed by the trial Court, it is revealed that on 03.01.2024, since despite service of non-bailable warrants, the petitioner did not appear before the trial Court, it had ordered for issuance of proclamation against him for 18.01.2024. A bare perusal of order dated 03.01.2024 shows that the proclamation was issued for 18.01.2024, which means that the petitioner was not granted statutory period of 30 days to cause his appearance before the trial Court. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C., as per which, a specified time of not less than 30 days is required to be given to the accused from the date of publishing such proclamation which is mandatory in nature. Reliance in this regard can be placed upon ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826*** and ***Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339.***

8. Further, when the case was taken up on 18.01.2024, it was adjourned to 08.02.2024 as the mandatory period of 30 days had not elapsed by then. However, while adjourning the case to 02.02.2024 awaiting the appearance of the petitioner, the trial Court failed to consider the fact that it could not have extended the time by simply adjourning the case as a fresh proclamation was required to be published once the period between issuance

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of publication of proclamation and the specified period of hearing was less than 30 days. Reference in this context can be made to ***Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166.***

9. Accordingly, in view of the discussion as made above and also in view of the ratio of law as laid down in above cited authorities, the present petition is allowed and the impugned order dated 08.02.2024 (Annexure P-3), passed by the Sub Divisional Judicial Magistrate, Baba Bakala Sahib in case titled as ***State vs. Bhupinder Singh***, arising out of FIR No. 16 dated 22.01.2022, registered under Sections 323, 452, 427, 34 of IPC at Police Station Beas, District Amritsar, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

10. However, the petitioner is directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 482 of the BNSS. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

11. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

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12.

Till the appearance of the petitioner before the trial Court, his arrest shall remain stayed.
13.

It is made clear that in case the petitioner fails to appear before the trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

23.09.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>