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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13518-2024 (O&M)
Date of decision: 18.03.2024

Gurpreet Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Umesh Aggarwal, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 28.10.2021 (Annexure P-4) passed by the learned Judicial Magistrate 1st Class, Amritsar in FIR No.224 dated 07.07.2015 under Section 13 of Punjab Prevention of Human Smuggling Act, 2012, whereby the petitioner was declared as proclaimed person and all the consequential proceedings emanating therefrom.

2. Learned counsel appearing for the petitioner contends that after registration of FIR (*supra*), the petitioner was granted the concession of anticipatory bail by the learned Additional Sessions Judge, Amritsar vide order dated 06.11.2015 (Annexure P-2). He further contends that challan was

presented on 05.10.2019 and since no notice was served upon the petitioner, he was not aware about presentation of challan, therefore, could not appear before the learned trial Court. He also contends that on account of his non-appearance, the learned trial Court declared the petitioner as proclaimed person vide order dated 28.10.2021 (Annexure P-4) and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the proclaimed person for commission of offence under Section 174-A IPC. Aggrieved by the said impugned order dated 28.10.2021 (Annexure P-4), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the impugned order is liable to be set aside on the ground that the mandate of Section 82 Cr.P.C. has not been followed in its letter and spirit by the trial Court and the petitioner has been declared as proclaimed person on 28.10.2021. 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. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in Court accepts notice on behalf of respondent No.1-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.

6. 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.

7. 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.

8. 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.

9. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 28.10.2021 (Annexure P-

4), vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set aside subject to payment of Rs.10,000/- as costs to be deposited with the District Legal Services Authority, Amritsar, for wasting precious time of the Court.

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18.03.2024
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[HARPREET SINGH BRAR]
JUDGE

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