

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

CRM-M-14379-2024 (O&M)
Date of decision: 20.03.2024

Himmat alias RahulPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajesh Lamba, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 15.02.2022 (Annexure P-6) passed by the learned Judicial Magistrate 1st Class, Panipat, whereby, the petitioner was declared as proclaimed person as well as quashing of FIR No.109 dated 02.03.2022 under Section 174-A of IPC registered at Police Station Israna, District Panipat and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner *inter alia* contends that the entire prosecution evidence was completed and on 08.10.2021, the petitioner could not appear before the learned trial Court due to his medical condition and due to his non appearance, his bail was cancelled and bail bonds were forfeited to the State followed by issuance of non-bailable warrants for 08.11.2021. On 08.11.2021, on account of receipt of report regarding non-bailable warrants as 'unexecuted', fresh non-bailable warrants were issued against the petitioner for 14.12.2021. On 14.12.2021, the trial Court has initiated P.O. proceedings against him by

observing that he is concealing himself and avoiding his arrest and issued proclamation under Section 82 of Cr.P.C. for 15.02.2022. Ultimately, on 15.02.2022 (Annexure P-6), the trial Court declared the petitioner as proclaimed person and consequently, FIR No.109 dated 02.03.2022 under Section 174-A of IPC was registered at Police Station Israna, District Panipat against him. Aggrieved by the impugned order dated 15.02.2022 (Annexure P-6) as well as the said FIR, 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.

4. Notice of motion.

5. Ms. Geeta Sharma, DAG, Haryana, who is present in Court accepts notice on behalf of the respondent 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. As far as possible, presence of the accused in the eventuality of his non-appearance ought to be secured by issuing summons or bailable warrants and non-bailable warrants/proclamation should not generally be issued. A perusal of the impugned order reveals that the trial Court without issuing summons or bailable warrants straight away issued proclamation, much less, without recording reasons of its belief that the petitioner has absconded or is concealing himself. 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.

9. The stand of learned counsel representing the petitioner is that the petitioner has been declared a proclaimed person in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. The petitioner was never served before the proclamation was issued under Section 82 Cr.P.C.

10. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 15.02.2022 (Annexure P-6) vide which the petitioner was declared as proclaimed person as well as FIR No.109 dated 02.03.2022 under Section 174-A of IPC registered at Police Station Israna, District Panipat, are hereby set aside subject to payment of Rs.10,000/- as costs to be deposited with the Poor Patient Welfare Fund,

PGIMER, Chandigarh, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

20.03.2024
Neha

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