

124 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16399-2024
Date of decision: 04.04.2024

Charanjit SinghPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nand Lal Sammi, 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 setting aside of impugned order dated 09.01.2023 (wrongly mentioned as '03.09.2023') (Annexure P-1) passed by the learned Judicial Magistrate 1st Class, Derabassi, District SAS Nagar, Mohali in FIR No.08 dated 13.07.2018 under Sections 4/5/7/8 of Immoral Trafficking Act, Police Station Dhakoli, District SAS Nagar, Mohali, whereby, the petitioner has been declared as proclaimed person.

2. Learned counsel appearing for the petitioner *inter alia* contends that the petitioner was on regular bail and was regularly appearing before the learned trial Court. He further submits that the petitioner was to be married in the month of April, 2022 and he was got engaged at City Kanpur in the month of January, 2022 but soon after the engagement of the petitioner, his proposed wife, unfortunately died before marriage. Thereafter, the petitioner went in

depression and started living in isolation and therefore, failed to appear before the learned trial Court on 16.08.2022. On 09.01.2023, the trial Court declared the petitioner as proclaimed person Aggrieved by the said impugned order dated 09.01.2023 (Annexure P-1), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the petitioner were never served with any notice/non-bailable warrants/bailable warrants and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. 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-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. 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 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 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu Vs. State of Haryana 2021 (1) RCR (CrI.) 319***, it has been held that 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.

11. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 09.01.2023 (Annexure P-1) vide which the petitioner was declared as proclaimed person is set aside.

12. The petitioner is directed to appear before the trial Court within a

period of 15 days from today and on his doing so, he shall be admitted to bail on his 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

04.04.2024
Neha

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