

CRM-M-14910-2024
Date of decision: 21.03.2024

Balwinder KaurPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Narinder Singh Dadwal, 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 26.09.2023 (Annexure P-2) passed by the learned Additional Chief Judicial Magistrate, Ludhiana, in case bearing FIR No.0157 dated 12.08.2017 (Annexure P-1) under Sections 61-1-14 of the Punjab Excise Act, 1914 registered at Police Station Division No.4, Police Commissionerate, Ludhiana, vide which the petitioner has been declared as proclaimed person.

2. Learned counsel appearing for the petitioner, *inter alia*, contends that the petitioner was on bail and was regularly appearing before the learned trial Court. On 19.07.2023, she has forgotten the date of hearing of the case and when she went to Court, she came to know that proceedings under Section 82 Cr.P.C. have already been initiated against her and ultimately vide order dated 26.09.2023 (Annexure P-2), the trial Court has declared the petitioner as

proclaimed person. Aggrieved by the said impugned order dated 26.09.2023 (Annexure P-2), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the non-appearance of the petitioner was not deliberate and intentional and thus, aggrieved by the said order, she has approached this Court by way of instant petition. It is contended that the impugned order is liable to be set aside on the ground of unintentional non-appearance of the petitioner.

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 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 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. 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 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 and the impugned order dated 26.09.2023 (Annexure P-2) vide which the petitioner was declared proclaimed person, is 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 District Legal Services Authority, Ludhiana, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

21.03.2024
Neha

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