



February, 2020, learned counsel for the petitioner has placed on record the copy of the air ticket qua his intended travel to India from New Zealand. As per the same, the petitioner is due to land in India on 30th March, 2020. The said photocopy of the air tickets is taken on record, subject to all just exceptions. Office to tag the same at the appropriate place.

Notice of motion for 27.05.2020.

It has been submitted that though the petitioner is coming to India and would want to surrender before the Court below, however, there is every likelihood of the petitioner being quarantined on account of the spread of Coronavirus disease (COVID-19). Therefore, a prayer has been made that the petitioner be granted interim protection till his surrender before the Court below.

In view of above, the petitioner is directed to appear before the trial Court on or before 06th April, 2020. Till then no coercive steps be taken against the petitioner. On his appearance, he shall be admitted to interim bail on his furnishing of bail bonds/surety bonds to the satisfaction of the trial Court. Petitioner shall produce the certified copy of the order passed by the trial Court, on the next date of hearing.

It is, however, made clear that in case the petitioner fails to appear before the trial Court on or before 06th April, 2020, then this order shall be of no avail to him.”

3. Learned counsel for the petitioner submits that in compliance of the aforesaid order, the petitioner has surrendered before the learned trial Court on 03.04.2020 and he was admitted to bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial Court. Learned counsel further submits that petitioner was declared proclaimed offender without following the drill of Section 82 Cr.P.C. Admittedly, the petitioner was residing in New Zealand and he was never served.

4. Learned State counsel assisted by learned counsel for the complainant 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.

5. 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.

6. 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.

7. 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 themselves. 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 (Crl.) 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.

8. 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.

9. In view of the aforesaid facts and circumstances that the petitioner has surrendered before the trial Court on 03.04.2020 and has been admitted to bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial Court, the present petition is allowed and the impugned order dated 21.01.2015 (Annexure P-2), vide which, the petitioner was declared proclaimed offender is set aside.

10. Pending miscellaneous application(s), if any, also stand(s) disposed of.

August 21, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |