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

CRM-M-22319-2024

Date of decision: 06.05.2024

Jaspreet Singh @ Jassa

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. K.B. Raheja, Advocate
for the petitioner.

Mr. Subhash Godara, Addl.A.G., Punjab.

Mr. Kamal Narula, Advocate
for the complainant.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 27.02.2024 (Annexure P-10) passed in FIR No.183 dated 03.12.2023 under Section 376 DA IPC and Section 6 of POCSO Act, registered at Police Station Mamdhot, District Ferozepur, whereby, the petitioner was declared as proclaimed person.

2. Learned counsel for the petitioner *inter alia* contends that the present case was registered against four persons, namely, Paramjit Singh, Gurmeet Singh, Lovepreet Singh and Jaspreet Singh @ Jassa (the petitioner herein). Paramjit Singh and Gurmeet Singh faced the trial, whereas, the Lovepreet Singh and Jaspreet Singh @ Jassa (the petitioner herein) were declared as proclaimed person. On the application moved by the police on

19.12.2023 (Annexure P-3) to the Court of learned Judicial Magistrate 1st Class, Ferozepur for issuance of warrant of arrest against the present petitioner, the arrest warrant was issued for 09.01.2024. On 09.01.2024, the learned trial Court observed that the raid was conducted but the accused/petitioner was not found present at his house and therefore, 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 27.02.2024. Ultimately, on 27.02.2024 (Annexure P-10), the trial Court has declared the petitioner as proclaimed person. Aggrieved by the impugned order dated 27.02.2024 (Annexure P-10), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the police was in hurry to get the petitioner declared as proclaimed person as the arrest warrant was issued on 09.01.2024 and the police has prepared the report on 07.01.2024 that the house of the accused was locked. He further submits that the petitioner approached the Court of the learned Additional Sessions Judge for anticipatory bail on 26.02.2024 and it is clear that he was availing his legal remedy and was not running from the process of law but he was declared as proclaimed person on the very next day without waiting for the outcome of the bail application and the application was dismissed on the ground that petitioner was declared as proclaimed person. Further it is contended 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. Mr. Subhash Godara, Addl.A.G., Punjab, 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 warrants of arrest/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

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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 27.02.2024 (Annexure P-10) vide which the petitioner was declared as proclaimed person is hereby set aside subject to payment of Rs.10,000/- as costs to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, within two weeks for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

06.05.2024
Neha

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