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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22661-2024

Reserved on :23.08.2024

Date of Pronouncement:27.08.2024

SATWANT SINGH

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Navkiran Singh, Advocate,
for the petitioner.

Mr. Bhupinder Singh, DAG, Haryana.

KULDEEP TIWARI, J.(Oral)

1. The present petition has been filed for quashing of impugned order dated 31.08.2023 (Annexure P-3), passed by the leaned Chief Judicial Magistrate, Amabala, whereby, the petitioner has been declared a proclaimed offender, in case FIR bearing No.184, dated 08.06.2018, under Sections 427, 435 and 506 of the IPC, registered at Police Station Ambala City, District Ambala.

2. In order to throw challenge to the impugned order (*supra*), learned counsel for the petitioner submits that the impugned order has been passed in gross violation of the provisions envisaged under Section 82 of the Cr.P.C.

3. He further submits that there is a clear violation of guidelines issued by the Ministry of Home Affairs, for service of summons/warrant

on the persons residing abroad, which were issued on consonance with the provisions of Section 105 of the Cr.P.C.

4. He also submits that in the instant FIR which was registered on 08.06.2018, the petitioner was summoned by the police authorities of Ambala City on dated 13.03.2019, and in pursuance thereof, he appeared before the police officials, and submitted that he was only a onlooker or a Bystander. Thereafter, the investigating officer having convinced by the petitioner's submissions, about his involvement in the instant FIR, never called the petitioner again. Thereafter, the petitioner went to Australia on dated 26.12.2019, and came back on dated 19.10.2022, and again went to Australia on dated 04.04.2023, and came back on dated 01.04.2024. For this he placed reliance upon a photocopy of his passport entries, to substantiate that when the notices/non-bailable warrants were issued *qua* the petitioner, he was not present in India.

5. On the other hand, learned State counsel vociferously opposed the grant of asked for relief (*supra*), to the present petitioner, and filed a reply, dated 23.07.2024, by way of an affidavit of Ms. Srishti Gupta, ASP, Amabala, wherein, it is submitted that the petitioner despite having knowledge of the criminal case pending against him, did not caused appearance before the court concerned. It further reflects that even after dismissal of anticipatory bail application filed by the petitioner, vide order dated 12.03.2024 by the learned Additional Sessions Judge, Ambala, the petitioner did not join proceedings by surrendering himself before the local police or before the trial court concerned. The affidavit further says that the petitioner has been rightly declared as a proclaimed

offender, after following all the legal process as mentioned under Section 82 of the Cr.P.C. Therefore, the instant petition deserves to be dismissed.

6. This Court has examined the submissions made by learned counsel for the petitioner, as well as learned State counsel, and perused the entire case file.

7. The non-bailable warrants, as issued against the present petitioner could not be executed on account of the petitioner being living abroad, and this fact is very well reflects from the report of the executing official, dated 15.04.2023 (Annexure P-3). The relevant extract thereof reads as under:-

“.....On enquiring the neighbours, it came to knowledge that entire family has gone abroad.....”

8. Despite the specific report of the executing official concerned, that the petitioner is living abroad, the learned CJM concerned, instead of proceeding as per the requirement of law, i.e. to summon the petitioner through embassy concerned, issued proclamation *qua* the petitioner, at petitioner's old place of residence, and thereafter, declared him proclaimed offender vide impugned order dated 31.08.2023. Thus, there seems to be a gross violation of provisions of Section 82 Cr.P.C. To substantiate the above observation this Court can safely place reliance upon “**Jagjit Singh and ors. vs. State of Punjab**” (in CRM-M-51993-2021, decided on 20.12.2021, wherein it was held that:-

“5. Moreover, since the petitioners, from the date of registration of the FIR (supra), and, upto now, are in a foreign land, and, hence they could not render cooperation to the investigating officer concerned, thereupon, it was imperative for the investigating officer concerned, to even if he intended to secure their appearances before him, or before the Court of law, to ensure that personal service

of the process of Court, became through the embassy of India, located in U.K., hence effected upon, on each of the accused. However, the afore evidence is grossly amiss. Consequently, upon a valid personal service being made upon the accused by the investigating officer concerned, through the embassy of India, located at United Kingdom, and, thereafter theirs yet not recording their personal appearances, for the relevant purposes, either before the investigating officer, or before the learned Magistrate concerned, thereupon it was open for the latter to thereafter seek issuance of non-bailable warrants, from the learned Magistrate concerned, and, also the afore process was required to become personally served upon the petitioners, at their abode, in U.K. However, neither the investigating officer, has ensured the causing of personal service upon the accused at U.K., prior to the issuance of nonbailable warrants, as issued by the learned Magistrate concerned, nor the learned Magistrate concerned, has ensured that the non-bailable warrants became served personally upon the accused at U.K., hence through the aegis of the embassy of India, located in U.K. The effect of the afore nonrecoursings, is, that the impugned order declaring the petitioners, as proclaimed offenders, becomes quashed, and, set aside. ”

9. On 07.05.2024, this Court had passed the following order:

“The order dated 31.8.2023 passed by the learned Chief Judicial Magistrate concerned, in case FIR No. 184 dated 8.6.2018, under Sections 427, 435, 506 IPC, registered at Police Station Ambala City, District Ambala, has caused grievance to the petitioner as he was declared a “proclaimed person”.

While throwing challenge to the order (supra), the learned counsel for the petitioner has drawn attention of this Court to the zimini order dated 17.4.2023, passed by the learned trial court concerned, wherein, it was recorded that the non bailable warrant of arrest, issued against the accused received back unexecuted, and therefore, he goes on record to suggest that the presence of the petitioner cannot be procured in an ordinary way, and decided to initiate proceedings under Section 82 Cr.P.C.. Learned counsel for the petitioner submits that in fact the satisfaction is totally incorrect as from the Process Server report, which is Annexure P/5, it is clearly transpired that the house of the petitioner was found locked, but in fact the entire family of the petitioner has already shifted abroad, and therefore, without adhering to the settled principles of law, and without making efforts to serve the petitioner through the concerned Embassy, the learned trial court concerned has taken a short cut, and proceeded to initiate proceedings under Section 82 Cr.P.C. He further submits that the entire sequence of events as narrated above would show that the petitioner has never deliberately evaded the service, and rather he was never served. Notice of motion 29.7.2024

Mr. Bhupender Singh, DAG, Haryana waives service on behalf of the respondent State and seeks time to file reply.

In the meanwhile, operation of the impugned order dated 31.8.2023 (Annexure P-3), declaring the petitioner as “proclaimed person” is ordered to be stayed.

Earlier the petitioner has approached this Court for seeking relief of grant of anticipatory bail, however, the same was denied by this Court as, at that time, the petitioner was declared as a “proclaimed person”, and did not challenged the said order. Therefore, this Court now directs the petitioner to surrender before

the learned trial court concerned within 15 days from today, and thereupon, prefer regular bail application before the learned trial court concerned. In case the petitioner surrenders, and prefers regular bail application before the learned trial court concerned, the latter shall decide the same most expeditiously, in accordance with law. ”

10. In deference to the aforesaid order, the present petitioner surrendered before the learned trial Court concerned, and he was released on bail by that Court, which reflects from the order dated 17.05.2024, produced by learned counsel for the petitioner. The same is ordered to be taken on record.

11. In view of the above observations, since the proclamation order has been issued without making adequate efforts, to serve the petitioner of summons/non-bailable warrants, through the embassy concerned, as the petitioner was living abroad, therefore, it is a non-compliance of provisions of Section 82 of the Cr.P.C. Now the petitioner has surrendered before the learned trial court concerned, and is facing trial, therefore, the basic object of the prosecution to secure the presence of the petitioner, to make him face trial has been attained. Hence, the impugned order dated 31.08.2023 (Annexure P-3) not being sustainable in law, is hereby, **set aside**, alongwith all consequential proceedings arising therefrom.

12. Resultantly, the instant petition is, hereby, **allowed**.

13. All pending applications, if any, also stand disposed of.

August 27, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No