

2024:PHHC:083055



121.

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

CRM-M-25638 of 2024

Date of decision: 03.07.2024

Harwinder Singh @ Babbi

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

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

Ms. Manjot Kaur, AAG, Punjab.

GURBIR SINGH, J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing the order dated 26.05.2023 (Annexure P-19) passed by learned Judicial Magistrate Ist Class, Sangrur, in case bearing No.CHI-191-2021 titled as *State Versus Sahbaz Khan @ Ali and others* whereby the petitioner has been declared proclaimed offender in FIR No.313, dated 15.12.2020, under Sections 452, 323, 341, 427, 506, 148, 149 of IPC, registered at Police Station City Sangrur, District Sangrur (Annexure P-2).

2. Learned counsel for the petitioner submits that the petitioner was granted anticipatory bail. He was regularly appearing before the trial Court. In the year 2022, the petitioner became mentally upset due to family problem and he started taking medicines. He failed to appear before the trial

Court on 27.01.2022 and thereafter, on 20.04.2022, non-bailable warrant was issued against him. Thereafter, vide order dated 07.07.2022, he was ordered to be summoned through proclamation under Section 82 Cr.P.C. Many times, proclamation was issued and not received back and finally, vide order dated 03.04.2023, the petitioner was declared proclaimed person. It is argued that the mandatory period of 30 days was not given and even proclamation was not read at public place.

3. Learned State counsel opposed the petition on the ground that the petitioner intentionally failed to appear before the court and he could not be arrested, then court issued proclamation. He failed to appear in court and was declared proclaimed person in accordance with the law.

4. I have heard the submissions of learned counsel for the petitioner as well as learned State counsel.

5. The petitioner was earlier granted anticipatory bail. He was appearing in the Court but he absented. The order dated 07.07.2022 passed by learned Magistrate is to the effect that non-bailable warrant issued against the petitioner received back served but he failed to appear and he is intentionally avoiding the arrest, so he cannot be summoned through ordinary process and proclamation is required to be issued. If non-bailable warrant was received back duly served, then petitioner would have been brought before the court, so the order dated 07.07.2022 is apparently wrong. Proclamation was issued many times but every time it was written

that it was not proper proclamation. The extract of order dated 03.04.2023 passed by learned Magistrate reads as under:-

“Today the case was fixed for appearance of accused Jaspal Singh @ Jassi @ Billa and Babbi but they have not appeared before this Court. On perusal of file and from the statement of Serving Official, it transpires that 30 days have not elapsed. Hence, this Court is constrained to issue proclamation under Section 82 Cr.P.C. and the same is hereby to be published requiring the accused Jaspal Singh @ Jassi @ Billa and Babbi to appear before this Court on 26.05.2023 at sharp 10:00 AM. Serving Official is directed to publish the proclamation in all three modes provided under Section 82 (2)(i) Cr.P.C. and to publish it on or before 17.04.2023 so that sufficient period may be provided to accused to appear before this Court. Now, the case is adjourned to 17.04.2023 for recording the statement of serving official. Copy of this order be sent to serving official for compliance.”

The extract of order passed on 17.04.2023 is as under:-

“Statement of serving official has been recorded in which he disclosed that he published the proclamation of abovesaid both accused on 16.04.2023 at the outside of court, outside the house of accused and third copy at Sunami Patti Dharamshala. Thus, proclamation issued against accused Jaspal Singh @ Jassi @ Billa and Babbi has been duly executed. Now the case is adjourned to 26.05.2023 for awaiting appearance of abovesaid both accused.”

The extract of order passed on 26.05.2023 is as under:-

“Proclamation of accused Jaspal Singh @ Jassi and Babbi had already been duly executed. Statement of Serving Official has been recorded in which he disclosed that he

published the proclamation on 01.03.2023. at the conspicuous place i.e. outside the Court and house of both accused also. Mandatory period of 30 days has expired but accused Jaspal Singh @ Jassi and Babbi have not appeared in the Court.

After perusing the record and the statement of the serving official, this Court is satisfied that the proclamation is duly published and both accused have absconded or concealing themselves deliberately. Therefore, this Court declares both accused Jaspal Singh @ Jassi and Babbi as proclaimed persons.”

5.1 Section 82 of Cr.P.C. reads as under:-

“82. Proclamation for person absconding.—*(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*

(2) The proclamation shall be published as follows:—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).”

5.2 The court on receipt of the publication awaited the petitioner for 30 days whereas proclamation was required to be published well in time with a clear 30 days notice after publication of proclamation against the petitioner, in order to enable the petitioner to appear in the Court. There is nothing that the proclamation was publicly read in some conspicuous place of the area where the petitioner was residing. Thus, the impugned order suffers from vice of infirmity, same had been passed without following the

statutory provisions and, therefore, the impugned order is hereby set aside.
The petitioner is directed to surrender before the trial Court/Duty Magistrate concerned within a period of two weeks and move an application for bail which shall be decided on the same day by passing speaking order.

6. The present petition is allowed on the above terms.

(GURBIR SINGH)
JUDGE

July 03, 2024
sanjeev

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