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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28118-2024 (O&M)
Date of decision: 29.05.2024

Lovepreet Singh @ Labhu

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of order dated 27.02.2024 (Annexure P-10) passed by learned trial Court, in FIR No.183 dated 03.12.2023 under Section 376-DA of the Indian Penal Code, 1860 (for short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the Act'), registered at Police Station Mamdhot, District Ferozepur, vide which the petitioner was declared as proclaimed person.

2. Learned counsel for the petitioner, *inter alia*, contends that the

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present case was registered against four persons, namely, Paramjit Singh, Gurmeet Singh, Lovepreet Singh and Jaspreet Singh @ Jassa (petitioner). Paramjit Singh and Gurmeet Singh faced the trial, whereas Lovepreet Singh and Jaspreet Singh @ Jassa (petitioner) were declared as proclaimed persons. 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 warrants of arrest against the present petitioner, the arrest warrant was issued for 09.01.2024. On 09.01.2024, 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 the proceedings declaring the petitioner as proclaimed person, 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), learned 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 filing the present petition.

3. Learned counsel for the petitioner further contends 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 house of the accused was locked. He also submits that the petitioner approached the Court of learned Additional Sessions Judge seeking anticipatory bail on 26.02.2024 and it is clear that he was availing

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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 learned 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 learned trial Court, by contending that the petitioner did not put in appearance before learned trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.

6. Having heard learned counsel for the parties and after perusing 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

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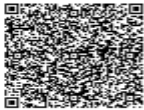
procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

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 learned 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 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 Cr.P.C. 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, 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,

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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

29.05.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No