



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

CRM-M-30159-2024
Date of decision: 12.07.2024

Surender @ Bhallu Ram

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mohit Kakkar, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of subsequent order dated 23.02.2024 (Annexure P-1) passed by the learned Sub Divisional Magistrate, Phul, Bathinda and all subsequent orders in pending trial bearing No. CHI/153/2024 dated 11.01.2024 arising out of FIR No.36 dated 24.05.2021 under Sections 363/366-A/120-B of IPC registered at Police Station Phul, Bathinda (Annexure P-2), whereby the petitioner was declared as proclaimed person.

2. Learned counsel appearing for the petitioner *inter alia* contends that the petitioner was not named in the FIR (*supra*) and the name of the petitioner was added as additional accused vide DDR No.17 dated 05.06.2021 and the petitioner was arrested in the present case on 05.06.2021, thereafter, he was released on regular bail vide order dated 05.07.2021 (Annexure P-3). It is further contended that initially the FIR was registered against the elder brother of the petitioner, namely, Vinodh Kumar, who enticed away the minor daughter of the complainant, namely, Pooja, on 12.05.2021 on the pretext of performing

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marriage and the complainant has registered the FIR (*supra*). When the elder brother of the petitioner and daughter of the complainant were not recovered, the petitioner and his mother was implicated as additional accused in the FIR (*supra*). Thereafter, the prosecutrix was recovered and her statement under Section 164 Cr.P.C. was recorded in which she did not allege any allegation against the petitioner and in the year 2023, non-bailable warrants were issued against the petitioner in remand paper which was registered at REMP No.79 of 2023 and thereafter proclamation proceedings under Section 82 Cr.P.C. initiated against the petitioner vide order dated 21.03.2023. Thereafter, notice was issued to the petitioner for supply of copy of challan vide order dated 11.01.2024 but due to inadvertence of Ahlmad of Court, notice could not be issued to the petitioner and on 18.01.2024, the learned trial Court observed that the petitioner had absented himself from the proceedings and his bail order, bail bonds and surety bonds were cancelled and forfeited to the State on 29.11.2022 and proclamation was issued against him which was received duly effected on 10.08.2023 and papers were pending for recording statement of serving constable to this effect. On that day, serving constable was summoned through bailable warrants for 01.02.2024 and remand papers were disposed off. Thereafter on 01.02.2024 the case was adjourned for 23.02.2024 and on 23.02.2024, the petitioner was declared as proclaimed person. Aggrieved by the said impugned order dated 23.02.2024 (Annexure P-1), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the petitioner was not aware about the pendency of the present case and the petitioner was called for remand paper in the year 2023 after a gap of 02 years

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and the petitioner has filed pre arrest bail but due to illness of his daughter and pregnancy of his wife, he could not join the proceedings and thereafter, in the month of November, 2023, his wife gave birth to a baby boy and the petitioner was alone taking care of his wife and children due to which, he could not join the proceedings and his pre-arrest bail was dismissed vide order dated 05.10.2023. It is further contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court.

4. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

5. Notice of motion.

6. Mr. Sandeep Kumar, DAG, Punjab, accepts notice for the respondent-State 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.

7. 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.

8. 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



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from the vice of arbitrariness or unreasonableness.

9. 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 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 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 (CrI.) 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.

10. 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.

11. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 23.02.2024 (Annexure P-1) vide which the petitioner was declared as proclaimed person, is hereby set aside.

12. The petitioner is directed to appear before the trial Court within a period of 04 weeks from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial

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Court, along with costs of Rs.10,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

13. The receipt of payment of costs imposed must be presented before the learned trial Court. The learned Court below is directed to grant bail to the petitioner only upon verification of the payment of said costs.

(HARPREET SINGH BRAR)
JUDGE

12.07.2024*Neha*

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