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

CRM-M-36157-2024

Date of decision: 31.07.2024

Puneet Sharma

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Chandan Singh Rana, Advocate
for the petitioner.

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

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 03.02.2022 (Annexure P-6) passed by the learned Judicial Magistrate 1st Class, Ludhiana, whereby, the petitioner has been declared as proclaimed person and all other subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner *inter alia* submits that the petitioner is permanently settled in Germany and holding an Italian Passport since the year 2018. He further submits that the petitioner has been falsely implicated in the present case and without effecting service on foreign address, he has been declared as proclaimed person. It is further contended that the petitioner left for Germany on 13.05.2018 and since then, he has not come back to India. The copy of passport of petitioner and the Visa showing the date of departure i.e. 13.05.2018 are attached as Annexures P-4 & P-5. He further submits that the petitioner has been declared as proclaimed person by effecting the service at local address through process serving constable on 03.01.2022,

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whereas, at the time of service, the petitioner was present in Germany and moreover, the prosecutrix has resiled from her statement and thereafter, co-accused, namely, Shashi Bala, mother of the petitioner, has been acquitted by the learned Additional Sessions Judge, Ludhiana, in reference of which he relies upon the judgment of the Division Bench of this Court passed in 'Sudo Mandal @ Diwark Mandal Vs. State of Punjab' 2011 (2) RCR (Criminal) 453. Aggrieved by the said impugned order dated 03.02.2022 (Annexure P-6), the petitioner has approached this Court by way of instant petition.

3. Learned counsel for the petitioner further contended that earlier petition filed by the petitioner seeking quashing of impugned order vide which he was declared as proclaimed person was withdrawn on 13.05.2024 (Annexure P-8) and, thereafter, the petitioner and the complainant have compromised the matter on 24.05.2024 and the copy of the compromise is available on record as Annexure P-2.

4. He further submits that neither the bailable or non-bailable warrants nor any summon were ever served upon the petitioner as he is permanently settled in Germany and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide impugned order dated 03.02.2022, the petitioner has been declared as proclaimed person. It is 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.

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

6. Notice of motion.



7. Mr. Subhash Godara, Addl.A.G., Punjab, who is present in Court, 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.

8. 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.

9. 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.

10. 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 (Crl.) 319***, it has been held that the conditions specified in

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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.

11. The sole purpose of 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.

12. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 03.02.2022 (Annexure P-6) vide which the petitioner was declared as proclaimed person and all other subsequent proceedings, are hereby set aside.

13. 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 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.

14. 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

31.07.2024*Neha*

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