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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-31234-2024 (O&M)
Date of decision: 03.07.2024

Rehman Khan @ Billa

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sukhcharan Singh Gill, Advocate for
Mr. Angrej Singh Sarwara, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 08.05.2024 (Annexure P-5) passed by learned Judicial Magistrate 1st Class, Malerkotla in FIR No.59 dated 26.04.2021 under Sections 363 & 366-A of IPC, registered at Police Station Sadar Ahmedgarh, District Malerkotla, vide which, while cancelling bail granted to the petitioner, proclamation under Section 82 Cr.P.C. has been issued and all the consequential proceedings emanating therefrom.
2. Learned counsel appearing for the petitioner contends that after

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registration of FIR (*supra*), the petitioner was granted the concession of bail and he was regularly appearing before learned trial Court. On the said date i.e. 08.05.2024, the petitioner was very present in the Court and he received a phone call that his wife, who was pregnant, was seriously ill and due to this fact, he could not appear before learned trial Court. Thereafter, the petitioner filed an application for grant of anticipatory bail before learned Additional Sessions Judge, Sangrur, which was dismissed vide order dated 20.05.2024. On 03.04.2024 & 26.04.2024, learned trial Court issued summons through bailable/non-bailable warrants against the petitioner and due to some avoidable circumstances, he could not appear. He also contends that on account of his non-appearance, learned trial Court cancelled his bail and while his bail/surety bonds were cancelled and forfeited to the State and also issued proclamation vide order dated 08.05.2024 (Annexure P-5). Aggrieved by the said impugned order, the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the impugned orders are 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. In support of his arguments, learned counsel for the petitioner relies upon the judgment passed by this Court in ***Sonu Vs. State of Haryana, 2021 (1) RCR (Cri.) 319*** and the judgment passed by the Gujarat High Court in ***Govindbhai Patel Vs. State of Gujarat, 2004 (4) RCR (Criminal) 830***.



4. Learned counsel appearing for the petitioner submits that the non-appearance of the petitioner was not deliberate and intentional and thus, aggrieved by the said order, he has approached this Court by way of instant petition. It is contended that the impugned order is liable to be set aside on the ground of unintentional non-appearance of the petitioner, as stated above.

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 on behalf of respondent No.1-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. 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. 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.

11. The sole purpose of issuance of non-bailable warrants or 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, present petition is allowed and the impugned order dated 08.05.2024 (Annexure P-5), vide which bail of the petitioner has been cancelled and bail/surety bonds were forfeited to the State and also proclamation has been issued against him as well as all the consequential proceedings emanating therefrom, are hereby set aside.

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

[HARPREET SINGH BRAR]
JUDGE

03.07.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No