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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33705-2024 (O&M)
Date of decision: 17.07.2024

Nitin Kumar

... Petitioner

Vs.

State of Punjab

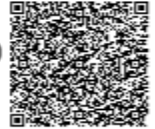
... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. M.S. Saini, Advocate
for the petitioner.

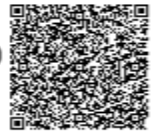
HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing of order dated 16.08.2022 (Annexure P-7) passed by learned Additional District & Sessions Judge, Fast Track Special Court, Hoshiarpur in FIR No.64 dated 28.10.2019 under Sections 376, 450, 506 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 6 & 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station Gardhiwala, District Hoshiarpur, whereby the petitioner was declared as



proclaimed offender and all the consequential proceedings emanating therefrom.

2. Learned counsel for the petitioner, *inter alia*, contends that after registration of FIR (*supra*), the petitioner was granted the concession of anticipatory bail by learned Court below vide order dated 08.11.2019 and was regularly appearing before learned trial Court on each and every date of hearing. In July, 2022, learned counsel representing the petitioner before learned trial Court left the practice and shifted to Canada. When the petitioner contacted Clerk of the counsel, he stated that a false case was registered, therefore, the same stood closed against him and under the said impression, he went to Gurugram and started working there. On 12.04.2022, learned trial Court issued non-bailable warrants against the petitioner, but the same never executed upon him, as he was disinherited by his family. He further contends that since no notice was served upon the petitioner, he was not aware about these proceedings, therefore, he could not appear before learned trial Court. He also contends that on account of his non-appearance, learned trial Court declared the petitioner as proclaimed offender vide order dated 16.08.2022 (Annexure P-7) and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the proclaimed offender for commission of offence under Section 174-A of IPC. Aggrieved by the said impugned order dated 16.08.2022 (Annexure P-7), the petitioner has approached this Court by way of filing the instant petition.



3. Learned counsel for the petitioner submits 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 and the petitioner has been declared as proclaimed offender on 16.08.2022. 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. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in Court accepts notice on behalf of the respondent-State 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. 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.

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 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. 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.

9. In view of the aforesaid facts and circumstances, the present petition is allowed and impugned order dated 16.08.2022 (Annexure P-7), vide which the petitioner was declared proclaimed offender as well as all the consequential proceedings emanating therefrom, are hereby set aside subject to payment of Rs.10,000/- as costs to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, within a period of two weeks from today, for wasting precious time of the Court.

10. The petitioner is directed to appear before learned trial Court within a period of four weeks from today and on his doing so, he shall be



admitted to bail on his furnishing bail/surety bonds to the satisfaction of learned trial Court concerned.

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

17.07.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No