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101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35629-2024
Date of decision: 29.07.2024

Ghulam Ali and another

....Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sarju Puri, Advocate
for the petitioners.

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

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of pre arrest bail to the petitioners in case bearing FIR No.136 dated 29.10.2019 under Sections 406/498-A/494 of IPC registered at Police Station Rahon, District SBS Nagar.

Brief facts of the case are that the FIR (*supra*) was registered on the statement of the complainant against the petitioners and their co-accused with the allegations that the complainant was subjected to cruelty in connection with demand of dowry and was turned out of the matrimonial home. Further, during the pendency of the proceedings, a settlement/divorce deed dated 10.06.2022 was executed between the complainant and her husband, namely, Ishrat Ali with the intervention of friends and relatives on the basis whereof a joint petition under Section 13-B of the Hindu Marriage Act, 1955, for dissolution of marriage by a decree of divorce by mutual consent came to be filed before the learned Family

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court, SBS Nagar. Further, a joint statement of complainant and her husband was recorded before the learned Family court at the stage of first motion, whereby, it was stated that out of the total agreed amount of Rs.4,00,000/-, a sum of Rs.2,00,000/- had already been received by the complainant, whereas, the remaining amount was agreed to be paid at the time of second motion statement. On the basis of amicable settlement, the petitioners along with their co-accused sought quashing of the FIR in question by way of filing CRM-M-25454-2023 wherein, vide order dated 18.05.2023, the concerned parties were directed to appear before the Court concerned and make their respective statements with regard to the aforesaid compromise. It is further alleged that during the course of trial, on account of their absence during the proceedings, the learned Additional Chief Judicial Magistrate, SBS Nagar, issued non-bailable warrants of arrest of petitioner No.1 vide order dated 07.10.2022, whereupon, it was reported by the process serving official vide his report dated 17.10.2022 that on account of being posted for examination duty, the aforesaid non-bailable warrants could not be complied with. Thereafter, a similar report was made by the process serving agency in respect of the non-bailable warrants dated 07.10.2022 issued by the learned trial Court in respect of petitioner No.2. Thereafter, the learned trial Court issued fresh non-bailable warrants of arrest dated 02.01.2023 against petitioner No.1, whereupon, it was reported by the serving official vide his report dated 15.01.2023 that the accused, namely, Ghulam Ali (petitioner No.1 herein) and Razia (petitioner No.2 herein) were not found at their residential address. Thereafter, the learned trial Court issued proclamation against petitioner No.1 and ultimately, on 25.07.2023, the petitioners were declared as proclaimed persons.

Learned counsel for the petitioners submits that the petitioners filed a



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petition under Section 438 Cr.P.C. for pre arrest bail before the learned Sessions Court, SBS Nagar which was allowed by the learned Additional Sessions Judge, vide order dated 03.05.2023 and the petitioners were directed to appear before the learned trial Court within a period of seven days, whereupon, the learned trial Court was directed to admit the petitioners to bail and unfortunately, due to some miscommunication gap, the aforesaid order could not be communicated to the petitioners, in result of which, compliance thereof, could not be made within the stipulated time period and therefore, the petitioners have filed an application for extension of time to comply with the said order but the same was dismissed in default on account of non-appearance.

Learned counsel for submits that the petitioners have also challenged the order dated 25.07.2023 (Annexure P-10) declaring them as proclaimed persons before this Court by way of filing CRM-M-28660-2024 in which notice of motion was issued vide order dated 31.05.2024 with a direction to the State of Punjab to file a reply before the adjourned date i.e. 04.07.2024 and on the said date, the case could not be taken up for hearing and now stands adjourned for 10.09.2024.

Notice of motion.

Mr. Subhash Godara, Addl.A.G., Punjab puts in appearance and accepts notice on behalf of the respondent-State.

Having heard learned counsel for the parties, it transpires that the petitioners were declared to be Proclaimed Offenders vide order dated 03.05.2023 without following the drill of Section 82 Cr.P.C. 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.

Further, the maximum sentence qua the offences alleged to have been committed by the petitioners is 3 years, therefore, subjecting the petitioners, who are distant relatives of the complainant's husband, to pre-trial detention would be too harsh not proportional to the punishment prescribed for the said offence. Reliance in this regard can be placed on the judgment rendered by this Court in ***Baby vs. State of Punjab and another 2024(1) R.C.R.(Criminal) 425.***

In view of the above discussion as well as the ratio of law enunciated by the Hon'ble Supreme Court in ***Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273, Arnab Manoranjan Goswami vs. State of Maharashtra, (2021) 2 SCC 427, Satender Kumar Antil vs. CBI, (2022) 10 SCC 51, Siddharam Satlingappa Mhetre vs. State of Maharashtra and ors., 2010 SCC OnLine SC 1375 and Shri Gurbaksh Singh Sibbia vs. State of Punjab, (1980) 2 SCC 565***, the petitioners are directed to appear before the trial Court within a period of two weeks and on their doing so, they shall be admitted to bail on their 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. The present petition stands allowed accordingly.

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

petitioners only upon verification of the payment of said costs.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

29.07.2024
Neha

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