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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-38329-2024 (O&M)
Date of decision: 08.08.2024

Reshma

... Petitioner

Vs.

State of Haryana

... Respondent

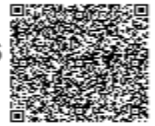
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. N.S. Kamboj, 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 12.01.2024 (Annexure P-8) passed by learned Additional Sessions Judge, Panchkula, in case No.SC/40/2022, arising out of FIR No.300 dated 13.12.2019 under Sections 3, 4, 5 & 6 of Immoral Traffic Prevention Act, 1956 and Section 370 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Sector-14, Panchkula, District Panchkula, vide which warrants of arrest have been issued against the petitioner.
2. Learned counsel for the petitioner contends that the charges

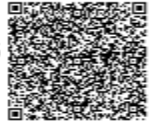
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were framed on 25.08.2022 and the case was adjourned to 29.11.2022 and thereafter, on 29.11.202, to secure presence of the prosecution witnesses, it was further adjourned to 13.03.2023 and on the said date, the application filed by the petitioner seeking exemption from personal appearance was allowed and the case was adjourned to 11.08.2023. Since learned trial Judge was to proceed on compensatory leave on 11.08.2023 & 14.08.2023, the case was taken up on 09.08.2023 and it was further adjourned to 12.01.2024. It is further contended that clerk of the counsel, who is representing the petitioner before learned trial Court, noted a wrong date, therefore, the petitioner could not appear on 12.01.2024 and learned trial Court issued warrants of arrest against her for 29.04.2024. On the adjourned date, the warrants of arrest could not be executed and even the petitioner did not appear and the case was adjourned to 20.08.2024. He also contends that after presentation of challan, the petitioner was regularly appearing before learned trial Court. However, due to noting the wrong date, the petitioner could not appear before learned trial Court on 12.01.2024 and on account of her non-appearance, learned trial Court issued warrants of arrest vide order dated 12.01.2024 (Annexure P-8). Aggrieved by the impugned order, the petitioner has approached this Court by way of instant petition.

3. Learned counsel for the petitioner submits that the impugned order is liable to be set aside on the ground that learned trial Court has not followed the proper procedure, as instead of issuing summons/bailable

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warrants, at the first instance, straightway issued warrants of arrest against the petitioner. 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. Ms. Geeta Sharma, DAG, Haryana, 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, warrants of arrest have been issued to secure her 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.

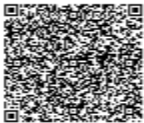
8. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab, 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 Cr.P.C. and non-recording of the satisfaction itself 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 the impugned order dated 12.01.2024 (Annexure P-8), vide which warrants of arrest have been issued against the petitioner as well as all the consequential proceedings emanating therefrom, are hereby set aside.

10. The petitioner is directed to appear before the trial Court within a period of two weeks from today and on her doing so, she shall be admitted to bail on her furnishing bail/surety bonds to the satisfaction of learned trial Court, along with costs of Rs.5,000/- to be deposited with the District Legal Services Authority, Panchkula, for wasting precious time of the Court.

11. The receipt of payment of costs imposed upon the petitioner must be presented before learned trial Court. Learned Court below is

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directed to grant bail to the petitioner only upon verification of the payment of said costs.

08.08.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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