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

CRM-M-39967-2023

Date of decision: 14.02.2024

Pal Singh @ Rachhpal Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. N.S. Dadwal, Advocate for the petitioner.

Mr. Viney Phogat, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. The instant petition has been filed by the petitioner seeking quashing of order dated 09.11.2004 (Annexure P-4) whereby the petitioner has been declared as proclaimed offender in a case having FIR No.20 dated 24.01.2004, under Section 15-16/61-85 of NDPS Act, at Police Station Sadar, Dabwali, by the Court of Judicial Magistrate, Ist Class, Dabwali

2. The counsel for the petitioner, *inter alia*, contends that the impugned order is not sustainable as the same was not passed in accordance with the provisions of Section 82 Cr.P.C. That 30 days' clear period was not given to the petitioner to appear in the Court concerned from the date of publication of proclamation as mandated by Section 82 Cr.P.C. It is further submitted that at the relevant time when the impugned order was passed, the petitioner was working in Bahrain as is evident from copy of his passport Annexure P-1. It is further submitted that no notice or warrants were ever

received by the petitioner through the Embassy of country concerned. It is further submitted that the impugned order deserves to be set aside and that the petitioner is ready to join the proceedings before the trial Court.

3. Reply way of an affidavit of Rajiv Kumar, Deputy Superintendent of Police, Crime, Dabwali (Sirsa) filed on behalf of the State is taken on record.

4. The State counsel while resisting the present petition submits that there is no illegality or infirmity in the impugned order and that the present revision petition is devoid of merits.

5. I have considered the submissions made by counsel for the parties.

6. As per Annexure P-3, FIR in the present case was registered against two persons who were traveling in a Qualis Toyota HR-09-A-6339 on 24.01.2004 and they managed to escape from spot and on checking of the said vehicle, commercial quantity of contraband was recovered. Later on, co-accused Gurdeep Singh was arrested and the petitioner was also nominated as accused. However, as the petitioner absconded, he was declared as proclaimed offender vide impugned order Annexure P-4. The plea of the petitioner is that he was falsely implicated in the present case and co-accused Gurdeep Singh who faced trial was also acquitted vide judgment Annexure P-6 dated 12.04.2012.

7. From the perusal of order dated 21.08.2004 Annexure P-5 passed by the Court concerned, it appears that the proclamation of petitioner was issued for 22.09.2004. From the perusal of Annexure P-4, it appears that the said proclamation was effected on 09.09.2004 for appearance of the

petitioner before the Court concerned on 22.09.2004. It also appears that from 22.09.2004, the time given to the petitioner for his appearance before the Court concerned was extended to 09.11.2004, on which date the impugned order was passed. There is nothing on the record to show that order dated 22.09.2004 was ever conveyed to the petitioner. In the given circumstances, it could be easily made out that petitioner was not given a mandatory period of 30 days to appear before the Court concerned as per mandate of Section 82 Cr.P.C and thus, the impugned order being not passed in accordance with law deserves to be set aside in the light of the law laid down by this Court in *Ashok Kumar Vs. State of Haryana 2013 (4) RCR (Criminal) 550*.

8. In the light of above, without commenting on the merits of the case the present petition is allowed and the impugned order dated 09.11.2004 (Annexure P-4) is hereby set aside.

9. The petitioner is directed to surrender before the Court concerned within next 15 days, failing which the present petition will be deemed to have been dismissed.

14.02.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No