

Ashok GandhiPetitioner

State of Punjab and another ...Respondents

Present: Ms. Smrita Devi, Advocate for
Mr. Anil Sharma, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

2. Learned counsel appearing for the petitioner, *inter alia*, contends that petitioner was on regular bail. Thereafter, due to outbreak of pandemic COVID-19, the matter could not be taken up. Thereafter, on 27.10.2021, the learned trial Court, without issuing notice to the petitioner, cancelled bail order of the petitioner and bail bonds/surety bonds were cancelled and forfeited to the

CRM-M-41505-2023**-2-**

State followed by issuance of non-bailable warrants for 09.12.2021. On 10.01.2022, presence of the accused/petitioner was secured through issuance of fresh non-bailable warrants for 09.05.2022. On 09.05.2022, on account of receipt of report regarding non-bailable warrants issued against the accused received back unserved, the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner for 09.09.2022. On 09.09.2022, the trial Court declared the petitioner as proclaimed person. Aggrieved by the said impugned orders dated 27.10.2021 (Annexure P-3) & 09.09.2022 (Annexure P-4), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the non-bailable warrants issued to the petitioner were never served and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Further, the trial Court vide order dated 09.05.2022 observed that petitioner is avoiding his service and issued proclamation under Section 82 Cr.P.C. for 09.09.2022. Ultimately, vide impugned order dated 09.09.2022, the petitioner has been declared as proclaimed person. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court.

4. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

5. Notice of motion.

6. Mr. Subhash Godara, Addl.A.G., Punjab, who is present in Court, accepts notice for respondent No.1 and supports the order passed by the learned

CRM-M-41505-2023

-3-

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.

7. 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.

8. 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.

9. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing himself. 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 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu Vs. State of Haryana 2021 (1) RCR (CrI.) 319***, it has been held that 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.

10. The sole purpose of issuance of non-bailable warrants or issuance of 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.

11. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to the respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2, the impugned orders dated 27.10.2021 (Annexure P-3) & 09.09.2022 (Annexure P-4) vide which the bail bonds and bail order of the petitioner was cancelled and non-bailable warrants were issued and the petitioner was declared as proclaimed person, are hereby set aside.

12. The petitioner is directed to appear before the trial Court within a period of 15 days from today and on his doing so, he shall be admitted to bail on his 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 District Legal Services Authority, Muktsar, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

13.03.2024
Neha

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