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

CRM-M-40365-2024

Date of decision: 21.08.2024

Inderjit Singh alias Inderjeet Singh

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Kanwaljeet Singh, Advocate
for the petitioner.

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

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of impugned order dated 29.09.2022 (Annexure P-6) passed by the learned Chief Judicial (Junior Division)-cum-Judicial Magistrate 1st Class, Batala, in case bearing No. CHI 12 of 2019 titled as '*State Vs. Inderjit Singh etc.*', whereby the petitioner has been declared as proclaimed person in case bearing FIR No.34 dated 24.03.2018 under Section 498-A of IPC registered at Police Station Shri Hargobindpur, District Batala/Gurdaspur on the basis of compromise dated 26.07.2024 (Annexure P-7) and all consequential proceedings emanating therefrom.

2. Learned counsel appearing for the petitioner contends that the petitioner was on anticipatory bail and further the challan was presented in his absence before the learned trial Court about which the petitioner was not aware as no notice/summon has been ever served by the Investigating Officer to the petitioner and, therefore, he could not appear before the learned trial Court. He further contends that on account of his non-appearance, the trial

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Court issued non-bailable warrants against the petitioner. On 02.08.2022, on account of receipt of report regarding non-bailable warrants as 'unexecuted with a report not at home,' the learned trial Court issued proclamation against the petitioner under Section 82 Cr.P.C. for 12.09.2022 and ultimately, the trial Court declared the petitioner as proclaimed person vide order dated 29.09.2022 (Annexure P-6). Aggrieved by the said impugned order dated 29.09.2022 (Annexure P-6), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing 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 the trial Court and the petitioner has been declared as proclaimed person on 29.09.2022. In support of his arguments, 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 respondent No.1-State and supports the order passed by the learned 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.

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



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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. The stand of learned counsel representing the petitioner is that the petitioner has been declared a proclaimed person in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. The petitioner was never served before the proclamation was issued under Section 82 Cr.P.C. He further submits that both the parties have compromised the matter amicably vide compromise deed dated 26.07.2024 (Annexure P-7). In the factual backdrop of this case, undisputedly, once the substantive offence already stands settled between the petitioner and the complainant, the impugned

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order dated 29.09.2022 and subsequent proceedings arising therefrom would be of no consequence.

10. Learned counsel representing the State has not been able to controvert the aforesaid facts and the position of law as laid down in the aforesaid judgment.

11. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to 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 and the impugned order dated 29.09.2022 (Annexure P-6) vide which the petitioner was declared as proclaimed person, is hereby set aside.

12. The petitioner is directed to appear before the 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 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, Gurdaspur, for wasting precious time of the Court.

13. 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 petitioner only upon verification of the payment of said costs.

(HARPREET SINGH BRAR)
JUDGE

21.08.2024*Neha*

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