

Jagjeet SinghPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Preetwinder Singh Dhaliwal, Advocate
for the petitioner.

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

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of order dated 01.09.2023 (Annexure P-4) passed by the learned Sub Divisional Judicial Magistrate, Payal, vide which the petitioner was declared as proclaimed offender along with all subsequent proceedings arising out of the same in FIR No.0020 dated 06.02.2023 under Sections 302/34 of IPC registered at Police Station Doraha, District Khanna (Annexure P-1).

2. Learned counsel appearing for the petitioner *inter alia* contends that the complainant has made an affidavit (Annexure P-2) to the local police that the petitioner has no role in death of Rajan Singla and petitioner has filed an application for grant of anticipatory bail and during the pendency of the bail application, it came to the notice that police has started the proclamation proceedings against the petitioner and other co-accused and at that time, the counsel for the petitioner appeared before the learned Sub Divisional

Magistrate, Payal and stated that the anticipatory bail of the petitioner is

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pending before the Sessions Court at Ludhiana and on considering the averments of counsel for the petitioner, the proceedings were postponed till 01.09.2023. On 01.09.2023, the petitioner was declared proclaimed offender by the learned Sub Divisional Judicial Magistrate, Payal in spite of the fact that the bail application of the petitioner is still pending for 06.09.2023 before the Sessions Court at Ludhiana. Aggrieved by the said impugned order dated 01.09.2023 (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 27.04.2023 observed that since non-bailable warrants have not been executed till date, he cannot be served through ordinary process and issued proclamation under Section 82/83 Cr.P.C. for 31.05.2023. Ultimately, vide impugned order dated 01.09.2023, the petitioner has been declared as proclaimed offender. 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 the respondent and supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance

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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. The impugned order dated 01.09.2023 (Annexure P-4) vide which the petitioner was declared proclaimed offender, is hereby set aside subject to payment of costs of Rs.10,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

23.01.2024
Neha

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