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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-2906-2024 (O&M)
Date of decision: 12.12.2024

Kamal Mehto ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Harlove Singh Rajput, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of order dated 24.01.2020, passed by the Court of learned Judicial Magistrate First Class, Jalandhar in case titled as *State of Punjab vs. Bikramjit Singh*, arising out of FIR No. 278 dated 20.12.2017, registered under Sections 323, 341, 506, 148, 149 and 120-B of IPC at Police Station Kartarpur, District Jalandhar, whereby bail of the petitioner had been cancelled and also for quashing of order dated 12.02.2021, whereby the petitioner had been declared a proclaimed person in the aforesaid case.
2. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in this case. He was granted concession of bail during the pendency of the trial. However, the petitioner could not appear before the learned trial Court on 07.12.2019, which led to issuance of non-bailable warrants against him for 24.01.2020. Since the petitioner could not appear

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before the Court even on 24.01.2020, his bail had been cancelled and proclamation proceedings had been initiated against him, which ultimately culminated into his declaration as a proclaimed person, vide impugned order dated 12.02.2021. It is argued that the absence of the petitioner before the Court on the said dates was neither and intentional nor deliberate as he had travelled abroad at that time and he has still not returned to India. The petitioner was not served with any notice/summons/warrants issued by the learned trial Court at his ordinary place of residence and had been declared a proclaimed person without following the proper procedure prescribed under Section 82 of Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

3. Learned State counsel has argued that the petitioner was having due knowledge of cancellation of his bail and issuance of proclamation against him and had intentionally avoided his appearance before the learned trial Court. Therefore, he had been rightly declared a proclaimed person. Hence, it is urged that the petition is liable to be dismissed.

4. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

5. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the trial Court from the date of initiating proceedings under Section 82 of Cr.P.C. as against the petitioner till the date of declaring him a proclaimed person, I am of the considered opinion that the impugned order dated 12.02.2021 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

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6. There are catena of judgments of different High Courts discussing the requirements necessary for issuance and publication of proclamation against an absconder under Section 82 Cr.P.C. and for declaring him as a proclaimed person/offender. These requirements have been discussed from time to time in *Rohit Kumar Vs. State of Delhi : 2008 Crl. J. 2561*, *Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366*, *Devender Singh Negi Vs. State of U.P. : 1994 Crl LJ (Allahabad HC) 1783*, *Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826*, *Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339*, *Dilbagh Singh Vs. State of Punjab : (P&H) 2015 (8) R.C.R. (criminal) 166*, *Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550*, *Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368*, *Birad Dan Vs. State : 1958 CriLJ 965*, *Negi alias Debu Vs. State of U.P. and another, 1994 Cri LJ 1783* and *Pal Singh Vs. The State : 1955 CriLJ 318*.

7. After going through the material placed on record as well as the copies of zimini orders passed by the learned trial Court, it is revealed that on 24.01.2020, since the non-bailable warrants issued against the petitioner were received back unserved with the report that he had gone abroad, the learned trial Court had ordered for issuance of proclamation against him for 09.03.2020. When the case was taken up on 09.03.2020, the proclamation was received executed but since the statutory period of 30 days had not elapsed, the case was adjourned to 03.04.2020 awaiting the appearance of the petitioner. However, while adjourning the case to 03.04.2020, the learned trial Court failed to consider the fact that it could not have extended the time by simply adjourning the case as a fresh proclamation was required to be

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published once the period between issuance of publication of proclamation and the specified period of hearing was less than 30 days. Reference in this context can be made to ***Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166.***

8. Thereafter, the case remained pending due to outbreak of COVID-19 pandemic and when it was taken up on 12.02.2021, the learned trial Court passed the impugned order declaring the petitioner a proclaimed person by observing that before outbreak of COVID-19, the proclamation was received back executed and the case was fixed for appearance of the petitioner but he had failed to do so. This procedure adopted by the learned trial Court cannot be stated to be in accordance with law as when the matter could not be taken up for a long time and there was complete lockdown in entire country since March, 2020 due to COVID-19, it was incumbent upon it to issue fresh proclamation against the petitioner, before declaring him a proclaimed person in pursuance of proclamation issued way back on 24.01.2020.

9. Further, a perusal of order dated 24.01.2020 itself shows that it was in the due knowledge of the learned trial Court that the petitioner had gone abroad. However, there is nothing on record to show that any letter/communication was written/made to the Ministry of External Affairs qua service of notice/warrants/proclamation against the petitioner. As such, it can reasonably be presumed that the process never reached the petitioner and hence, he had no occasion to conceal himself. As such, the action of the trial Court by switching to the proclamation proceedings under Section 82 of Cr.P.C. can itself be stated to be bad in the eyes of law. Reliance in this

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context can be placed upon ***Manjit Kaur vs. State of Punjab : 2013 SCC Online (P&H) 8663.***

10. Accordingly, in view of the discussion as made above and also in view of the ratio of law as laid down in above cited authorities, the present petition is allowed and the impugned order dated 12.02.2021, passed by the Court of learned Judicial Magistrate First Class, Jalandhar in case titled as ***State of Punjab vs. Bikramjit Singh***, arising out of FIR No. 278 dated 20.12.2017, registered under Sections 323, 341, 506, 148, 149 and 120-B of IPC at Police Station Kartarpur, District Jalandhar, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

11. However, the petitioner is directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 482 Bharatiya Nagarik Suraksha Sanhita, 2023. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

12. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

13. Till the appearance of the petitioner before the trial Court, his arrest shall remain stayed.

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14. It is made clear that in case the petitioner fails to appear before the trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

12.12.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No