



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

CRM-M-45267-2024
Date of decision: 13.09.2024

Faqir Hussain

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. V.P. Singh Rathore, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of criminal complaint No.171 of 2019 instituted on 04.06.2019 under Sections 363/366-A/376/120-B of IPC and Section 6 of POCSO Act, 2012 (Annexure P-1) and summoning order dated 23.12.2022 passed by the learned Additional Sessions Judge, Fast Track, Special Court, Hoshiarpur (Annexure P-2) as well as P.O. order dated 07.06.2023 passed by the learned Additional Sessions Judge, Fast Track, Special Court, Hoshiarpur (Annexure P-3).

2. Learned counsel for the petitioner wishes to withdraw the prayer with regard to quashing of the summoning order and the complaint (Annexure P-1 & P-2) and he confines his prayer to the extent of quashing of impugned order dated 07.06.2023 (Annexure P-3) passed by the learned Additional District and Sessions Judge, Fast Track Special Court, Hoshiarpur, vide which the petitioner has been declared as proclaimed offender.

3. Learned counsel for the petitioner *inter alia* contends that the

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petitioner has been falsely implicated in the complaint (*supra*) (Annexure P-1) and while impleading him as accused No.12, his address is only mentioned as resident of Kathua (J&K) and in the absence of correct and complete address, the petitioner has never received any summons and due to his absence, on 07.06.2023, the trial Court declared the petitioner as proclaimed offender. Aggrieved by the said impugned order dated 07.06.2023 (Annexure P-3), the petitioner has approached this Court by way of instant petition.

4. Learned counsel appearing for the petitioner submits that the petitioner was never served with any summons/notice and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide impugned order dated 07.06.2023, 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.

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

6. Notice of motion.

7. Mr. Sandeep Kumar, DAG, Punjab, who is present in Court, accepts notice for 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.

8. 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.



9. 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.

10. 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.

11. The sole purpose of issuance of summons 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.

12. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to respondents No.2 & 3 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondents No.2 & 3 and the impugned order dated 07.06.2023 (Annexure P-3) vide which the petitioner was declared as proclaimed offender,

is hereby set aside.

13. 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 Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

14. 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

13.09.2024
Neha

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