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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45627-2024 (O&M)
Date of decision: 16.09.2024

Lovepreet Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Shivani, Advocate for
Mr. Narinder S. Lucky, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing of order dated 02.04.2024 (Annexure P-6) passed by learned Judicial Magistrate 1st Class, Tarn Taran, in FIR No.210 dated 03.12.2023 under Sections 363 & 366 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station City Sadar, Tarn Taran, District Tarn Taran, vide which the petitioner was declared as proclaimed person and all the consequential proceedings emanating therefrom.



2. Learned counsel for the petitioner, *inter alia*, contends that FIR (*supra*) was registered on 03.12.2023 and thereafter, a compromise was effected between the petitioner and the complainant on 12.08.2024. The complainant accepted the marriage between his daughter and the petitioner and now they are cohabiting together as husband and wife. The parties also agreed not to proceed with the case. However, on an application moved by the Investigating Officer, learned trial Court, vide order dated 09.02.2024 (Annexure P-3), issued non-bailable warrants of arrest of the petitioner, for 16.02.2024. Thereafter, on 16.02.2024, proclamation was ordered to be issued against the petitioner for 01.03.2024 and on that date, after recording statement of the official, who executed the proclamation, fixed the case for 02.04.2024 for awaiting appearance of the petitioner and ultimately, learned trial Court, vide impugned order dated 02.04.2024 (Annexure P-6), declared the petitioner as proclaimed person and intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the proclaimed person for commission of offence under Section 174-A of IPC. Aggrieved by the said impugned order dated 02.04.2024 (Annexure P-6), the petitioner has approached this Court by way of instant petition.

3. Learned counsel 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 learned trial Court and



the petitioner has been declared as proclaimed person on 02.04.2024. In support of her arguments, learned 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. Rishabh Singla, AAG Punjab, who is present in Court, accepts notice on behalf of the respondent-State and supports the order passed by learned trial Court, by contending that the petitioner did not put in appearance before learned 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 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.



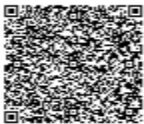
it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

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. Keeping in view the aforementioned facts and circumstances, instant petition is allowed and the impugned order dated 02.04.2024 (Annexure P-6), vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set aside.

10. The petitioner is directed to appear before learned 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/surety bonds to the satisfaction of learned trial Court, along with costs of Rs.10,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time

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of the Court.

11. The receipt of payment of costs imposed upon the petitioner must be presented before learned trial Court. Learned Court below is directed to grant bail to the petitioner only upon verification of the payment of said costs.

[HARPREET SINGH BRAR]
JUDGE

16.09.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No