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

CRM-M-48780-2023

Date of decision: 04.04.2024

Amandeep Kaur

...Petitioner

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. A.S. Brar, Advocate for the petitioner.

Mr. J.S. Dhaliwal, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner seeking setting aside of order dated 31.10.2022 Annexure P-3 passed by the Court of Judicial Magistrate, Ist Class, Moga whereby the petitioner has been declared proclaimed person in criminal complaint NACT No.999/2018 under Section 138 NI Act titled Mastan Singh Vs. Amandeep Kaur.

2. The counsel for the petitioner submits that the petitioner is falsely implicated in the aforesaid criminal complaint by complainant/respondent No.2. That petitioner was regularly appearing before the trial Court but due to unavoidable circumstances, failed to appear before the Court concerned in year 2021 and was finally declared proclaimed person vide order dated 31.10.2022. The counsel for the petitioner further submits that the impugned order is not sustainable as the same was not passed as per the mandatory provisions of Section 82 Cr.P.C. The counsel for the petitioner while referring to order dated 29.09.2022 passed by the learned trial Court and order

dated 31.10.2022 passed by the learned trial Court submits that petitioner was not given a clear period of 30 days to cause her appearance before the trial Court with effect from the date when proclamation was actually effected. The counsel for the petitioner further submits that thus, the impugned order cannot sustained being passed in violation of the provisions of Section 82 Cr.P.C. In support of his contentions, the counsel for the petitioner has placed reliance on decision of this Court in ***Ashok Kumar Vs. State of Haryana 2013 (4) RCR Criminal 550.***

3. I have considered the submissions made by counsel for the petitioner.

4. The perusal of the record, it appears that petitioner was not given mandatory period of 30 days to appear before the Court concerned, after publication of proclamation. Further, offence under Section 138 NI Act is a bailable offence.

5. In light of the above discussion, the impugned order being passed in contravention to the mandatory provisions of Section 82 Cr.P.C., is not sustainable in eyes of law and deserves to be set aside.

6. Consequently, without expressing any opinion on the merits of the case, the present petition is allowed and impugned order dated 31.10.2022 Annexure P-3 is set aside with direction to the petitioner to appear before the trial Court within next 10 days and to move an application for grant of regular bail which is to be decided by the said Court in accordance with law on the same very day while taking into consideration the fact that offence under Section 138 NI Act is a bailable offence.

04.04.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No