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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-50320-2024 (O&M)
Date of decision: 14.10.2024

Surmit Sahota and another

... Petitioners

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pranav Handa, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for quashing of the order
dated 25.01.2022 (Annexure P-1) passed by learned Judicial Magistrate 1st
Class, Jalandhar in FIR No.84 dated 04.07.2021 under Sections 406 & 498-A
of the Indian Penal Code, 1860, registered at Police Station Women,
Jalandhar, District Police Commissionerate Jalandhar, whereby the
petitioners were declared as proclaimed offenders and all the consequential
proceedings emanating therefrom.
2. Learned counsel for the petitioners contends that the petitioners
are father-in-law and mother-in-law of the complainant and they are 68 and



65 years of age, respectively. The petitioners are residing in USA and they are American passport holders for the last so many years. Petitioner No.1 visited India on 18.01.2019 and went back to USA on 25.02.2019 and petitioner No.2 lastly visited India on 09.10.2019 and she went back on 28.10.2019 and thereafter, they never came to India. The FIR (*supra*) was registered on 04.07.2021 against the petitioners, when they were in USA, therefore, they were not aware about the said proceedings. He further contends that no notice was served upon the petitioners, therefore, they could not appear before learned trial Court. Learned counsel also contends that on account of their non-appearance, learned trial Court declared the petitioners as proclaimed offenders vide impugned order dated 25.01.2022 (Annexure P-1) and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the proclaimed offenders for commission of offence under Section 174-A IPC. Aggrieved by the impugned order, the petitioners have approached this Court by way of instant petition.

3. Learned counsel for the petitioners 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 petitioners have been declared as proclaimed offenders on 25.01.2022. In support of his arguments, learned counsel for the petitioners 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. Subhash Godara, Addl. A.G., Punjab, who is present in Court accepts notice on behalf of the respondent-State and supports the impugned order passed by learned trial Court, by contending that the petitioners 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 their 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 aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 25.01.2022 (Annexure P-1), vide which the petitioners were declared proclaimed offenders as well as all the consequential proceedings emanating therefrom, are hereby set aside.

10. The petitioners are directed to appear before learned trial Court within a period of eight weeks from today and on their doing so, they will be admitted to bail on their furnishing bail/surety bonds to the satisfaction of learned trial Court, along with costs of Rs.10,000/- each to be deposited with All India Pingalwara Charitable Society, Jalandhar Branch, Makdoom Pura Dhobi Mohalla, Jalandhar, for wasting precious time of the Court.

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

[HARPREET SINGH BRAR]
JUDGE

14.10.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No