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

CRM-M-51292-2024

Date of decision: 16.10.2024

Beant Singh

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Arihant Goyal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 20.05.2022 (Annexure P-20) vide which the proclamation was issued against the petitioner, order dated 17.11.2022 (Annexure P-21), whereby, the petitioner was declared as proclaimed person as well as quashing of FIR No.424 dated 28.11.2023 (Annexure P-23) under Section 174-A of IPC registered at Police Station Kalanwali and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner was arrested on 05.11.2019 and was released on regular bail vide order dated 06.11.2019 (Annexure P-2). Thereafter, the challan of the said case was filed on 15.11.2019 and the case was fixed for 27.02.2020 and the petitioner could not appear on the said date before the learned trial Court and

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filed an application for exemption from personal appearance and the same was allowed and further, the case was adjourned to 20.03.2020. Thereafter, due to COVID-19 pandemic, the case was adjourned to 08.07.2020 and further to 10.11.2020. It is further alleged that the petitioner left the country and moved to United Kingdom in the year 2020 i.e. on 23.09.2020 on student visa and since then, he never came back to India. On 28.09.2020, the surety of the petitioner filed an application for withdrawing his surety bond and the notice of the same was issued for 06.10.2020. On 06.10.2020, the complainant filed an application for directing the petitioner to submit the passport in the Court and notice of the same was issued for 23.10.2020 and further on various dates. On 21.01.2021, the report was submitted before the trial Court that the petitioner left the country and moved to England and thereafter, his bail was cancelled and non-bailable warrants were issued against him. On 22.04.2021, 21.09.2021 and 24.01.2022, fresh non-bailable warrants were issued against him and on 20.05.2022 (Annexure P-20) on account of receipt of report regarding issuance of non-bailable warrants as 'unexecuted', the learned trial Court has initiated P.O. proceedings against him by observing that he is concealing himself and avoiding his arrest and issued proclamation under Section 82 of Cr.P.C. for 17.11.2022. Ultimately, on 17.11.2022 (Annexure P-21), the trial Court declared the petitioner as proclaimed person and consequently, FIR No.424 dated 28.11.2023 under Section 174-A of IPC was registered at Police Station Kalanwali against him. Aggrieved by the impugned orders dated 20.05.2022 (Annexure P-20) and 17.11.2022 (Annexure P-21) as well as the said FIR, the petitioner has approached this Court by way of instant petition.



3. Learned counsel appearing 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 the trial Court.

4. Notice of motion.

5. Ms. Geeta Sharma, DAG, Haryana, who is present in Court accepts notice on behalf of the respondent 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.

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. As far as possible, presence of the accused in the eventuality of his non-appearance ought to be secured by issuing summons or bailable warrants and non-bailable warrants/proclamation should not generally be issued. A perusal of the impugned order reveals that the trial Court without issuing



summons or bailable warrants straight away issued proclamation, much less, 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 Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality.

9. The stand of learned counsel representing the petitioner is that the petitioner has been declared a proclaimed person in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. The petitioner was never served before the proclamation was issued under Section 82 Cr.P.C.

10. Moreover, the drill of Section 195 Cr.P.C. has not been followed in the present case. A co-ordinate bench of this Court in Pardeep Kumar vs. State of Punjab and another CRM-M No.41656 of 2023 decided on 23.08.2023, speaking through Justice Arun Monga made the following observations:

"Invoking criminal liability for the offence under section 174A of IPC:

xxx xxx xxx

xvii. Once the Court decides to proceed against the petitioner for an offence under Section 174A of the IPC, it is imperative to institute a formal written complaint in the competent jurisdictional court. This imperative arises from the prevailing provision of section 195 of the Code of Criminal Procedure, 1973 which mandates that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate."

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11. In view of the aforesaid facts and circumstances, the present petition is allowed and impugned orders dated 20.05.2022 (Annexure P-20) and 17.11.2022 (Annexure P-21) vide which the proclamation was issued against the petitioner and the petitioner was declared as proclaimed person, respectively, as well as FIR No.424 dated 28.11.2023 under Section 174-A of IPC registered at Police Station Kalanwali, are hereby set aside.

12. The petitioner is directed to appear before the trial Court within a period of 04 weeks 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.1 lakh to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

13. 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

16.10.2024*Neha*

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