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

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CRM-M-53226-2024 (O&M)

Date of decision: 21.11.2024

Rajinder Kumar**...Petitioner****Versus****State of Punjab****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Deepak Arora, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. CRM-46166-2024

Allowed as prayed for, subject to all just exceptions.

Documents are taken on record.

2. CRM-M-53226-2024 (O&M)

The instant petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of order dated 12.08.2024, passed by the Chief Judicial Magistrate, Gurdaspur in case titled as *State vs. Rajinder Kumar*, arising out of FIR No. 190 dated 12.11.2019, registered under Sections 279, 427, 337 of IPC at Police Station City Gurdaspur, District Gurdaspur, whereby the petitioner had been declared a proclaimed person.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in this case. Challan in the aforesaid case was filed on

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23.06.2020 i.e. during the period of outbreak of COVID-19 pandemic and the petitioner was not aware about the same. The summons/warrants issued by the learned trial Court were never received by the petitioner. He had been declared a proclaimed person without following the proper procedure prescribed under Section 82 Cr.P.C. The petitioner is ready to appear before the learned trial Court and join the Court proceedings. Hence, it is urged that the impugned order is liable to be set aside.

4. Learned State counsel, who has advance notice of the petition, has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the trial Court, therefore, he was rightly declared a proclaimed person. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have also gone through the material placed on record.

6. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the trial Court from the date of initiating proceedings under Section 82 Cr.P.C. as against the petitioner till the date of declaring him a proclaimed person, I am of the considered opinion that the impugned order dated 12.08.2024 suffers from some illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

7. There are catena of judgments of different High Courts discussing the requirements necessary for issuance and publication of proclamation against an absconder under Section 82 Cr.P.C. and for declaring

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him as a proclaimed person/offender. These requirements have been discussed from time to time in ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366, Devender Singh Negi Vs. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783, Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826, Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339, Dilbagh Singh Vs. State of Punjab : (P&H) 2015 (8) R.C.R. (criminal) 166, Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550, Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368, Birad Dan Vs. State : 1958 CriLJ 965, Negi alias Debu Vs. State of U.P. and another, 1994 Cri LJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318.***

8. After going through the material placed on record as well as the copies of zimni orders passed by the learned trial Court, it is revealed that summons/bailable warrants issued against the petitioner were received back either due to incorrect address or his house being locked. Thereafter, on 21.07.2023, since the non-bailable warrants issued against the petitioner were received back unserved, the trial Court had ordered for issuance of proclamation against him for 09.10.2023 at the first instance and thereafter, due to non-receiving of proclamation either served or others, fresh proclamations were issued against the petitioner. A bare perusal of order dated 21.07.2023 shows that the learned trial Court before ordering for publication of proclamation has not recorded its satisfaction much less proper satisfaction that that the petitioner had absconded or was concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable

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diligence, which was in violation of the provisions of Section 82(1) of Cr.P.C. Reliance in this regard can be placed upon ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561.***

9. Accordingly, in view of the discussion as made above and also in view of the ratio of law as laid down in above cited authorities, the present petition is allowed and the impugned order dated 12.08.2024, passed by the Chief Judicial Magistrate, Gurdaspur in case titled as ***State vs. Rajinder Kumar***, arising out of FIR No. 190 dated 12.11.2019, registered under Sections 279, 427, 337 of IPC at Police Station City Gurdaspur, District Gurdaspur, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

10. However, the petitioner is directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

11. Needless to say that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

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12. Till the appearance of the petitioner before the trial Court, his arrest shall remain stayed.
13. It is made clear that in case the petitioner fails to appear before the trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

21.11.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>