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

CRM-M-54572-2024

Date of decision: 05.11.2024

Baljeet Kaur

....Petitioner

Versus

State of Punjab

...Respondent

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

Mr. Subhash Godara, Addl.A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 05.10.2019 (Annexure P-5) in complaint case No. COMI/845/2013 dated 10.10.2012 under Sections 323/324/452/506/511/354/34 of IPC registered at Police Station District Faridkot, whereby the petitioner has been declared as proclaimed offender.

2. Learned counsel appearing for the petitioner *inter alia* contends that the petitioner was on bail and was regularly appearing before the learned trial Court on each and every date. In the year 2017, daughter of the petitioner died in Canada due to which she had to visit Canada and could not appear before the learned trial Court on some dates but as soon as she came back to India, she appeared before the learned trial Court and joined the proceedings which shows that the petitioner is not evading the process of law. Thereafter, the petitioner was not keeping well and had to visit Canada for her treatment due to which she again could not appear before the learned trial Court and on

14.08.2019, the trial Court issued proclamation under Section 82 of Cr.P.C.

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against the petitioner and 05.10.2019, the learned trial Court has declared the petitioner as proclaimed person. Aggrieved by the said impugned order dated 05.10.2019 (Annexure P-5), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the summons or proclamation issued to the petitioner were never served and, therefore, the finding of the trial Court that the petitioner is intentionally evading her arrest, is erroneous. Further, the trial Court vide order dated 14.08.2019 observed that since non-bailable warrants have not been executed till date, she cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C.. Ultimately, vide impugned order dated 05.10.2019, the petitioner has been declared as proclaimed person. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court.

4. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

5. Notice of motion.

6. Mr. Subhash Godara, Addl.A.G., Punjab, who is present in Court, accepts notice for the respondent-State 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 her presence.

7. 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.

8. 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.

9. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing herself. 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 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality.

10. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioner in the present case has herself come forward and has undertaken to appear before the trial Court on each and every date.

11. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 05.10.2019 (Annexure P-5) vide which the petitioner was declared as proclaimed person, is hereby set aside.

12. The petitioner is directed to appear before the trial Court within a

period of 02 weeks from today and on her doing so, she shall be admitted to bail on her furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.10,000/- 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

05.11.2024

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No