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

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CRM-M-58991-2024 (O&M)
Date of decision: 03.12.2024

Ahmad Abdulla @ Ahmed Mohammed Ali Al Amri ...Petitioner

Versus

State of Punjab ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Piyush Sharma, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of order dated 11.09.2024, passed by the learned Judicial Magistrate First Class, Ferozepur in case titled as *State of Punjab vs. Ahmad Abdulla and others*, arising out of FIR No. 38 dated 02.05.2023, registered under Section 420 of IPC and Section 13 of the Punjab Travel Professionals Regulation Act, 2014 at Police Station Ghallkhurd, District Ferozepur, whereby the petitioner had been declared a proclaimed person.
2. 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. Initially, the petitioner was not aware about the registration of the aforesaid FIR. However, as soon as it came to his knowledge, he had moved an application for grant of pre-arrest bail before the Sessions Court, which was disposed of on 23.11.2023 with a direction to the police to

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serve the petitioner with notice under Section 41A of Cr.P.C. and in case he was to be arrested, then three days' prior notice be served upon him. However, the prosecution did not bring this fact into the notice of the learned trial Court and proceedings under Section 82 of Cr.P.C. were initiated against him. Even the proclamation was affixed at a wrong address and that too by mentioning wrong name of the petitioner. The petitioner had been declared a proclaimed person without following the proper procedure prescribed under Section 82 Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

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

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

5. 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 11.09.2024 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

6. 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 him as a proclaimed

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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*.

7. After going through the material placed on record as well as the copies of zimini orders passed by the trial Court, it is revealed that on 27.09.2023, since the non-bailable warrants issued against the petitioner were received back unserved, the learned trial Court had ordered for issuance of proclamation against him for 30.10.2023. Thereafter, on 30.10.2023, fresh proclamation was ordered to be issued for 11.12.2023 and even on 11.12.2023, fresh proclamation was again ordered to be issued for 29.01.2024 as proclamations ordered earlier could not be issued. When the case was taken up on 29.01.2024, the proclamation was received back executed. Thereafter, the case was adjourned on several dates for recording the statement of the serving police official, which was eventually recorded on 11.09.2024. A perusal of the statement of the serving police official shows that the proclamation was executed on 22.01.2024 requiring the petitioner to cause his appearance on 29.01.2024 before the learned trial Court, which means that he was not granted statutory period of 30 days to cause his appearance before the learned trial

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Court. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C., as per which, a specified time of not less than 30 days is required to be given to the accused from the date of publishing such proclamation which is mandatory in nature. Reliance in this regard can be placed upon ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826*** and ***Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339.***

8. Further, a perusal of the statement of the serving police official reveals that the proclamation was not read over in some conspicuous place of the town or village in which the petitioner was supposed to be residing. As per Section 82 (2) of the Cr.P.C.. for publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. Reliance in this regard can be placed upon ***Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368.***

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 11.09.2024, passed by the learned Judicial Magistrate First Class, Ferozepur in case titled as ***State of Punjab vs. Ahmad Abdulla and others***, arising out of FIR No. 38 dated

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02.05.2023, registered under Section 420 of IPC and Section 13 of the Punjab Travel Professionals Regulation Act, 2015 at Police Station Ghallkhurd, District Ferozepur, 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 BNSS. 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 observe 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.

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.

03.12.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes