

CRM-M-65048-2023
Date of decision: 05.01.2024

Jaspreet SinghPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajesh Bhatheja, Advocate
for the petitioner.

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

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of impugned order dated 04.04.2022 (Annexure P-4) passed by the learned Judicial Magistrate 1st Class, Moga, whereby, the petitioner has been declared as proclaimed person in case bearing FIR No.16 dated 21.02.2019 under Sections 323/324/148/149 of IPC (Section 379-B of IPC added later on) registered at Police Station Mehna, District Moga.

2. Learned counsel appearing for the petitioner *inter alia* contends that the FIR was registered on 21.02.2019 but the petitioner left India on 24.11.2019 and went abroad and since then, the petitioner was living abroad and on 07.07.2023, he came back to India. He further submits that the challan was presented before the learned trial Court at the time when petitioner was not in India. The petitioner was not aware of any of the proceedings pending before the learned trial Court as he never returned to India till 07.07.2023. It is further submitted that the learned trial Court declared the petitioner as proclaimed

CRM-M-65048-2023**-2-**

person on 04.04.2022 (Annexure P-4). Aggrieved by the said impugned order dated 04.04.2022 (Annexure P-4), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the petitioner was never served with any bailable warrants, non-bailable warrants or even any proclamation as he was not in India and as per impugned order dated 04.04.2022, the proclamation was affected on 03.03.2022 at the local address of the petitioner where the petitioner was not residing and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous as there was no question to send the proclamation at the local address when the petitioner was residing abroad. Ultimately, vide impugned order dated 04.04.2022, 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. It is further submitted that when the petitioner came back to India on 07.07.2023, it came to his knowledge that he has been declared proclaimed person and apprehending his arrest, he applied for anticipatory bail which was dismissed by the learned Additional Sessions Judge, Moga vide order dated 12.12.2023 (Annexure P-5).

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

5. Notice of motion.

6. Mr. Subhash Godara, Addl.A.G., Punjab, who is present in Court, accepts notice for 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.

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 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 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu Vs. State of Haryana 2021 (1) RCR (CrI.) 319***, it has been held that 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.

CRM-M-65048-2023

-4-

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 himself come forward and has undertaken to appear before the trial Court on each and every date of hearing.

11. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 04.04.2022 (Annexure P-4), 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 four weeks from today and on his doing so, he shall be admitted to bail on his furnishing the adequate bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.10,000/- to be deposited with the District Legal Services Authority, Moga, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

05.01.2024
Neha

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