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

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CRM-M No.59728 of 2024

Date of decision: 28.11.2024

Jiwan Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Janak Singh Bhinder, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition has been made by the petitioner for quashing of order dated 07.09.2024 passed in case arising out of FIR No.37 dated 02.05.2023 registered under Section 61 of the Punjab Excise Act, 1914 at Police Station Chhajali, District Sangrur, whereby the petitioner has been declared a proclaimed person. It is submitted by the petitioner that he had been extended benefit of regular bail in the aforementioned case and had been regularly appearing before the learned trial Court. On 08.11.2023, he had appeared before the concerned Court and the matter was adjourned to 13.12.2023. He could not appear on that date due to death of his maternal uncle. His bail was cancelled on that date and bonds were forfeited to the State. However, he had surrendered

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before the trial Court on 10.01.2024 and was extended benefit of bail. He could not appear on the next date of hearing which was fixed for 13.03.2024 as he had noted the said date as 07.10.2024. He contacted his counsel on 07.10.2024 and came to know about his bail being cancelled and qua declaring him as a proclaimed person on 07.09.2024. Prayer has been made by the petitioner for setting aside the impugned order dated 07.09.2024 by submitting that his absence was unintentional as he was a truck driver and remains out of station in connection with his work and as he had noted some wrong date of hearing.

2. Ms. Ruchika Sabherwal, Sr. DAG, Punjab has advance notice of the petition and has submitted that the bail of the petitioner had been cancelled on 13.03.2024 due to his non-appearance. He did not appear thereafter and hence proclamation proceedings have been rightly initiated against him and no illegality was committed by learned trial Magistrate by declaring him as a proclaimed person.

3. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record.

4. On a perusal of record, it is revealed that the proceedings under Section 82 of the Code of Criminal Procedure had been initiated against the petitioner vide order dated 23.05.2024 (Annexure P-8). However, before initiating such proceedings, the proper satisfaction as envisaged under Section 82 (2) of the Code of Criminal Procedure had not been

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recorded by the learned trial Court. More so, the proclamation was issued on 23.05.2024 for 20.07.2024 but the petitioner had not been declared a proclaimed person on 20.07.2024 rather the case was adjourned and he was declared a proclaimed person on 07.09.2024 after recording statement of the serving police official Lovepreet Singh qua publication of proclamation on 14.06.2024. As per Section 82 of the Code of Criminal Procedure, the requisite date and place for appearance of the accused must be specified in the proclamation requiring him to appear on such date at a specified place but in this case, though the proclamation was issued for 20.07.2024 but the petitioner had not been declared a proclaimed person on that requisite date rather the matter was adjourned to 14.08.2024 and then to 07.09.2024 for recording statement of the police officials and he was ultimately declared a proclaimed person on 07.09.2024 though no direction was given to him to appear on that particular date before the learned trial Court. In such circumstances, in the considered opinion of this Court, the petitioner had been declared a proclaimed person in breach of the prescribed procedure and the impugned order dated 07.09.2024 suffered from material irregularity and is, therefore, liable to be quashed. The same is accordingly quashed.

5. It is, however, to be mentioned that the bail of the petitioner had been cancelled in this case as on 13.03.2024. Though in the petition, no challenge has been made to this order but learned counsel for the petitioner while addressing arguments has submitted that the order dated

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13.03.2024 whereby the bail of the petitioner had been cancelled and the subsequent orders whereby non-bailable warrants had been issued against him are also liable to be quashed as his absence was not intentional since he being a truck driver had been out of station and was unable to appear. The absence of the petitioner on 13.03.2024 and on subsequent dates appears to be due to his carelessness but in view of the fact that he is ready and willing to join the proceedings before the trial Court, in my considered opinion his absence does not attract the consequence of detaining him into custody. Keeping in view the above facts and circumstances, the petition is disposed of with direction to the petitioner to surrender before the trial Court on or before the date fixed before it. On his surrender, he will move an application for grant of bail and on his doing so, the trial Court will release him on bail subject to his furnishing personal/surety bonds to its satisfaction. However, if he fails to appear within the stipulated date, then this petition shall be deemed to be dismissed.

28.11.2024

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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No