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

CRM-M-63211-2024
Date of decision: 17.12.2024

Baldev Singh ....Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mehtab Singh Khaira, Advocate
for the petitioner.

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

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of order dated 19.01.2021 (Annexure P-7) passed by the learned SDJM, Bholath in case bearing No. CRM/34/2019 in FIR No.30 dated 05.06.2018 registered at Police Station Bholath District Kapurthala under Sections 498-A/406 of IPC titled '*State Vs. Manjinder Singh and another*', whereby, the petitioner has been declared as a proclaimed offender and all consequential proceedings arising therefrom.

Learned counsel appearing for the petitioner *inter alia* contends that the petitioner is the citizen of Portugal since the year 2016 and has not visited India even once. The FIR was registered on 05.06.2018 against him and on 27.03.2019, the learned trial Court issued non-bailable warrants against him for 10.05.2019. On 10.05.2019, fresh non-bailable warrants against the petitioner were issued for 11.07.2019 and vide order dated 28.01.2020, the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner. On 19.01.2021, the trial Court declared the petitioner as proclaimed offender.

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Aggrieved by the said impugned order dated 19.01.2021 (Annexure P-7), the petitioner has approached this Court by way of instant petition.

Learned counsel appearing for the petitioner submits that the non-bailable warrants issued to the petitioner were never served as he was in Portugal and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide impugned order dated 19.01.2021, the petitioner has been declared as proclaimed offender. 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 also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

Notice of motion.

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

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.

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

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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 notsuffer from the vice of arbitrariness or unreasonableness.

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.

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.

In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2 and the impugned order dated 19.01.2021 (Annexure P-7) vide which the petitioner was declared as proclaimed offender is set aside.

The petitioner is directed to appear before the trial Court within a period of six weeks from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.20,000/- to be deposited with the All India Pingalwara Charitable Society, Jalandhar Branch, for wasting precious time of

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the Court.

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

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

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