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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 3531/2024**

RAJIV RANA

.....Petitioner

Through: Mr. Puneet Khurana, Adv.
along with Mr. Navish
Bhatt, Mr. Vikram Singh
Dalal, Mr. Mahavir Singh
& Mrs. Pallavi Talwar,
Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Nadita Rao, ASC
(CRL) for the State.
SI Neeraj Tomar, ANTF /
Crime Branch.

+ **CRL.M.C. 3537/2024 & CRL.M.A. 19956/2024**

SEEMA

.....Petitioner

Through: Mr. Puneet Khurana, Adv.
along with Mr. Navish
Bhatt, Mr. Vikram Singh
Dalal, Mr. Mahavir Singh
& Mrs. Pallavi Talwar,
Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Nadita Rao, ASC
(CRL) for the State.
SI Neeraj Tomar, ANTF /
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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11.07.2024

**CRL.M.A. 13567/2024 (exemption from filing certified, true
typed and translated copy of annexures filed alongwith the
petition) in CRL.M.C. 3531/2024**

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1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present petitions are filed challenging the order dated 23.02.2024 (hereafter '**impugned order**') passed by the learned Special Judge (NDPS), Karkardooma Courts, Delhi in proceedings arising out of FIR No. 222/23 registered at Police Station Crime Branch for offences under Sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'), whereby the petitioners were declared as proclaimed offenders.
4. The seminal facts relevant for the purpose of the presents petitions are as follows:
5. Subject FIR No. 222/2023 dated 20.09.2023 was lodged at the behest of ASI Neeraj Rana against two accused persons namely, Jyoti and Lucky @ Himesh (son of Jyoti). It is alleged that accused - Jyoti alongwith her son Lucky @ Himesh were apprehended by the raiding team on a secret information. It is alleged that thereafter, 480 grams of heroin, and cash amount to ₹44,240/- was recovered from accused Jyoti.
6. It is alleged that during the course of investigation, the accused persons, in their disclosure statements have named the petitioners herein as the source from whom the said accused persons procured the seized contraband/heroin.
7. The petitioners sought pre-arrest bail under Section 438 of the CrPC in Bail Application Nos. 2635/2023, 2636/2023, however, the same were dismissed by the learned Trial Court *vide* order dated 08.01.2024.



8. The petitioners, subsequently filed Bail Application Nos. 1201/2024 and 1200/2024 seeking pre-arrest bail before this Court. It is alleged that during the pendency of the proceedings, the petitioners were declared as proclaimed offenders by the impugned order. Consequently, the petitioners withdrew the Bail Application Nos. 1201/2024 and 1200/2024 with permission to seek appropriate remedy.

9. For this reason, CRL. MC. 3531/2024 and 3537/2024 is filed seeking setting aside of the impugned order whereby petitioners were declared proclaimed offender.

10. The learned counsel for the petitioners submits that they have been falsely implicated in the present FIR, and the same is only a counterblast to the case registered by the CBI on the complaint of Anil Kumar (father-in-law of the petitioner) against the police personnel of ANTF Crime Branch. He submits that the petitioners learnt about the initiation of the proclamation proceedings under Section 82 of the CrPC, during the pendency of the proceedings before this Court in Bail Applications bearing 1200/2024 and 1201/2024.

11. He submits that there has been no recovery of any contraband/heroin from the petitioners or any of the family members. He submits that there is no incriminating evidence against the petitioners, and that they have been implicated in the subject FIR merely on the disclosure statement of the main accused persons in the subject FIR, namely Jyoti and Lucky @ Himesh.

12. He submits that the prosecution's reliance on CDR connectivity of the petitioners and the family members with the main accused persons, that is, Jyoti and Lucky @Himesh is misplaced inasmuch as the main accused persons are the relatives
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of the petitioners, and reliance on CDR connectivity, thus, to implead the petitioners in the subject FIR is ill-founded.

13. He submits no notice under Section 67 of the NDPS Act was served upon the petitioners or any of their family members.

14. At the outset, the learned Additional Standing Counsel (ASC) for the State opposed the present petition and submits that the petitioners have failed to appear before the Investigating Officer and have deliberately avoided joining of investigation, for which reason they were rightly declared as *absconder* after following the due procedure of law.

15. She further submits that all the mandatory requirements contained in Section 82 of the CrPC were complied with while declaring the accused-petitioner as proclaimed offender. The proclamation was also published in the daily news-paper circulating in the area for wide publicity. The petitioners were aware of the proceedings which have been initiated against them, thus, the object of publication of proclamation has been sufficiently achieved.

16. The procedure for securing the presence of an accused is succinctly provided in Chapter VI of the CrPC. In the present case, the learned Magistrate has duly recorded the necessary satisfaction at each and every step, whether it was during the issuance of notice under Section 67 of the NDPS Act, non-bailable warrants, or the proclamation under Section 82 of the CrPC. Section 82 of the CrPC reads as under:

82. Proclamation for person absconding.

(1) *If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*

(2) *The proclamation shall be published as follows:--*



(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).

17. For issuance of a proclamation under Section 82 of the CrPC, it is necessary that the Court has to be satisfied on the basis of material that a person despite having knowledge of proceeding is avoiding the process issued. The Madras High Court in ***Nachi Exports v. Thiruvengadam & Sons : 2008 CrLJ (NOC) 278 (Mad.)*** held that the concerned Court should consider factors such as — the accused was well aware of the NBW of arrest, issued against him, and also regarding the efforts taken by the officer concerned for its execution, and that obviously the accused was evading arrest, by adopting foul play or tactful means.

18. If any Court has a reason to believe that any person against whom a warrant of arrest has been issued by it, has absconded or



is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than 30 days from the date of publishing such proclamation. Where a proclamation published is in respect of a person accused of certain specified heinous offences Court may pronounce him a 'Proclaimed offender' and make a declaration to that effect under Section 82 of the CrPC.

19. On the backdrop of the above said aspects, the circumstances in this case have to be considered. The petitioners were implicated as accused based on the disclosure statements of the main accused in the subject FIR. A raid was subsequently conducted on the evening of 22.09.2023 at the petitioners' residence, but it was discovered that they had already fled the premises during the nights of 20/21.09.2023, upon learning that the accused persons, Lucky and Jyoti, had been apprehended by the police. Additionally, the petitioners' mobile numbers were found to be switched off. Following this, a notice under Section 67 of the NDPS Act was sought to be served upon them, and NBWs were issued, both of which remain unexecuted. Consequently, proceedings under Section 82 of the CrPC were initiated against them.

20. It is relevant to note that the learned Trial Court after perusing the report of the investigation officer regarding the execution of process under Section 82 of the CrPC passed the impugned order taking into consideration the statements of the neighbours and the proclamation carried in the newspapers as well as outside the court premises and the house of the petitioners besides the beating of drums. The relevant part of the



impugned order dated 23.02.2024 is reproduced hereunder :

“His statement regarding execution of process under Section 82 Cr.PC against the accused persons, namely, Seema, Rajiy Rana @ Bobby and Yash Rana recorded. I have gone through the report of the 10 SI Neeraj Tomar regarding execution of process under Section 82 Cr.PC as well as statements recorded of the neighbours and the proclamation carried in the newspapers as well as outside the court premises and the house of the accused persons besides beat of drums. The photocopies of the photographs of pasting of Notice under Section 82 Cr.PC are Ex.P1 to P4 and photocopy of newspapers regarding proclamation is Ex.P5 and statement of neighbours is Ex.P5A (colly) and the Report is Ex.P6.”

21. The prosecution showed the record of proceedings under Section 82 of the CrPC to this Court. After perusing the record, it is apparent that the petitioners’ claim of only becoming aware of these proceedings when they filed application seeking pre-arrest bail in April 2024, is unsubstantiated. The record clearly shows that all essential requirements for initiating proceedings under Section 82 of the CrPC were properly followed, including the recording of neighbours’ statements, proclamations in newspapers, postings outside the court premises and the accused’s residence, and public announcements through the beating of drums. Given these circumstances, it must be presumed that the petitioners were indeed aware of the ongoing proceedings.

22. In the present case, it is evident that the petitioners are attempting to evade the legal process by not participating in the investigation despite having knowledge of the case. Even if the argument is accepted that the petitioners became aware of being declared proclaimed offenders during the hearing before the Court in BAIL APPLN. 1200/2024, and were pursuing legal remedies, their actions still fall short, as they did not join the investigation at any point. This conduct suggests an intent to



circumvent legal proceedings rather than cooperating with the authorities as required by law and does not in any manner explain as to why the petitioners never chose to appear before the learned Trial Court.

23. It is trite that courts take a dim view of attempts to avoid legal proceedings through technicalities or by taking undue advantage of the legal system. Filing pre-arrest bail applications without joining the investigation demonstrates a lack of *bona fide*, and is generally viewed unfavourably.

24. In the present case, where the petitioners were evidently aware of the issuance of process and the dismissal of their pre-arrest bail applications, they cannot now invoke these grounds as a means to continually evade the legal process in such an egregious manner.

25. The father-in-law of the petitioner/Rajiv Rana as well as his counsel, were aware of the relevant proceedings before this Court and all other Courts. The petitioners however, evaded the process of law, for more than six months. Thus, this Court finds no infirmity in the issuance of NBWs and subsequently the process under Section 82 of the CrPC, and the order *vide* which the petitioners were declared proclaimed offender.

26. In view of the above, the present petitions are dismissed. Pending application(s), if any, are accordingly disposed of.

27. It is clarified that observations in the present order are confined for the purpose of deciding the present petitions and are not an expression of opinion on the merits of the matter.

28. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

JULY 11, 2024

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