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**230 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

CRM-M-13275-2023 (O&M)

Date of Decision: 17.01.2025

SUNIL KUMAR GAUBA

...Petitioner

V/S

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aayush Arora, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

Mr. Dinesh Mahajan, Advocate
for respondent No. 2

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 482 of Cr.P.C. seeking quashing of order dated 30.08.2022 (Annexure P-5) passed by learned Sub Divisional Judicial Magistrate, Batala in FIR No.38 dated 04.03.2020 registered under Sections 420 of Indian Penal Code and Section 13 of Punjab Prevention of Human Smuggling Act, 2012 registered at Police Station City Batala, whereby the petitioner was declared as proclaimed offender.

2. The following order was passed on 10.05.2023:

“By way of present petition filed under Section 482 Cr.P.C., prayer has been made for seeking quashing of order dated 30.08.2022 passed by the court of learned Sub Divisional Judicial Magistrate, Batala, whereby the petitioner has been declared as procalimed offender, in case FIR No.38 dated 04.03.2020, under Section 420 IPC and Section 13 of Punjab Prevention of Human Smuggling

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Act, 2012, registred at Police Station City Batala, besides it, seeking quashing of the FIR as well.

At the very outset, learned counsel for the petitioner submits that he will not press the present petition as regards relief of seeking quashing of the FIR and resultantly, the petition survives only qua his challenge to the order dated 30.08.2022, whereby, he has been declared as proclaimed offender.

Mr. Dinesh Mahajan, Advocate appearing on behalf of respondent No.2 has disputed the averments made on behalf of the petitioner on the previous date that the entire payment has been made, however, the same shall be an issue to be adjudicated upon during trial.

List on 25.05.2023.

In the meanwhile, the petitioner shall surrender before the trial court within a period of 07 days from today and shall be admitted to bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial court/Duty Magistrate, however, subject to payment of Rs. 25,000/- in the shape of demand draft in the name of respondent No. 2, which shall be released in his favour.”

3. Learned counsel for the petitioner submits that petitioner has already complied with the aforementioned order dated 10.05.2023 and has deposited the cost of Rs. 25,000/- and has been released on regular bail by the learned trial Court and he is regularly appearing there and he further submits that the impugned order has been passed without following the mandate of Section 82 (1) of Cr.P.C. 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.



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4. I have heard learned counsel for the petitioner and perused the record of the case with his able assistance and with the consent of parties, the matter is taken up for final disposal.

5. 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.

6. 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 (Crl.) 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.

7. 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 have themselves come forward and have undertaken to appear before the trial Court on each and every date.

8. The impugned order dated 30.08.2022 (Annexure P-5) vide which the petitioner was declared proclaimed offender, is hereby set aside along with all consequential proceedings arising therefrom.

9. The present petition is disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

17.01.2025
Ajay Goswami

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