

CRM-M-21238-2024 (O&M)

-1-

234 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-21238-2024 (O&M)

Date of Decision: 17.01.2025

HARMEET SINGH @ HARMEET SINGH GILL

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Neeraj Yadav, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 482 of Cr.P.C. seeking quashing of order dated 07.03.2024 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Amritsar in FIR No. 543 dated 21.09.2016 registered under Sections 420, 467, 468, 471, 120-B, 465 of Indian Penal Code at Police Station Civil Lines Amritsar, whereby the petitioner was declared as proclaimed person.

2. The following order was passed on 06.05.2024:

"Contends, inter alia, that petitioner was never served in FIR No. 543 dated 21.09.2016 under Sections 120-B, 420, 467, 468, 471, 465 of Indian Penal Code, 1860, registered at Police Station Civil Lines, Amritsar. Also contends that there is no other criminal case pending against the petitioner.

Notice of motion.

Ms. Manjot Kaur, AAG, Punjab, accepts notice on behalf of the respondent-State and seeks time to have instructions and/or file written response in the matter.

Posted for 29.07.2024.

**CRM-M-21238-2024 (O&M)****-2-**

In the meanwhile, petitioner shall join proceedings before learned trial Court. In case of his doing so, he shall be released on interim bail, till the next date of hearing, on furnishing adequate bail and surety bonds to the satisfaction of learned Special Court/CJM/Duty Magistrate concerned.”

2. Learned counsel for the petitioner submits that petitioner has already complied with the aforementioned order dated 06.05.2024 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.

3. 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.

4. 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.

5. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the

CRM-M-21238-2024 (O&M)

-3-

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.

6. 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.

7. The impugned order dated 07.03.2024 (Annexure P-5) vide which the petitioner was declared proclaimed person, is hereby set aside along with all consequential proceedings arising therefrom.

8. 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