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235 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-25705-2024 (O&M)

Date of Decision: 17.01.2025

MANISH JAKHAR

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.S. Rai, Sr. Advocate
with Mr. Kunwar Rajan, Advocate for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. By way of this petition filed under Section 482 Cr.P.C., petitioner prays to quash the order dated 06.12.2022 (Annexure P-17) passed by learned Judicial Magistrate Ist Class, Samalkha (Panipat), whereby he has been declared a proclaimed offender in case FIR No.67 dated 02.02.2019, under Sections 166, 180, 218, 420, 465, 477, 467, 468, 341 and 120-B IPC, registered at Police Station Samalkha.

2. Following order was passed on 22.05.2024:

“By way of this petition filed under Section 482 Cr.P.C., petitioner prays to quash the order dated 06.12.2022 (Annexure P-17) passed by learned Judicial Magistrate, Samalkha (Panipat), whereby he has been declared a proclaimed offender in case FIR No.67 dated 02.02.2019, under Sections 166, 180, 218, 420, 465, 477, 467, 468, 341 and 120-B IPC, registered at Police Station Samalkha.

Learned Senior counsel for the petitioner contends that by way of impugned order apart from the petitioner, co-accused Sikander Singh Dhillon was also declared proclaimed offender. Said Sikander Singh Dhillon approached this Court by

filing CRM-M-18225-2023 and he was allowed the interim relief by way of order dated 17.04.2023 (Annexure P-20). Later on, said Sikander Singh Dhillon was allowed anticipatory bail vide order dated 20.05.2024 passed in CRM-M-495-2024.

Learned Senior counsel submits that the only difference between the case of the petitioner and that of co-accused Sikander Singh Dhillon is that co-accused Sikander Singh Dhillon was residing at the relevant time in United States of America; whereas petitioner was residing at Dubai. Learned Sr. counsel submits that petitioner is ready to join the investigation, but apprehends that in case he surrenders before the police, he may be arrested.

Notice of motion.

Mr. Randhir Singh, Addl. A.G., Haryana accepts notice on behalf of respondent-State. Copy of paper book be supplied to him during the course of day.

Adjourned to 25.07.2024.

In the meantime, operation of the impugned order dated 06.12.2022 (Annexure P-17) shall remain stayed, subject to the petitioner appearing before the Investigating Agency and join the investigation.”

3. Learned counsel for the petitioner submits that petitioner has already complied with the aforementioned order dated 22.05.2024 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.



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4. Learned State counsel on instructions from SI Srikant affirms the aforesaid fact that petitioner has appeared before the trial Court.

5. 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.

6. 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.

7. 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

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non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

8. 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.

9. The impugned order dated 06.12.2022 (Annexure P-17) vide which the petitioner was declared proclaimed offender, is hereby set aside along with all consequential proceedings arising therefrom subject to payment of costs of Rs.10,000/- to be deposited with the PGIMER Chandigarh Poor Patients' Welfare Fund, for wasting precious time of the Court.

10. 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*