



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

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**CRM-M No.4847 of 2025
Date of decision: 28.01.2025**

Bholi

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanjeev Kumar Arora, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 528 of BNSS, 2023, for quashing of order dated 08.05.2024 passed by learned Additional Sessions Judge, Moga in FIR No.129 dated 22.06.2021 (Annexure P-1) registered under Sections 323, 325, 436, 506 and 34 IPC (Sections 323 and 325 IPC added later on) at Police Station City South, District Moga, vide which the petitioner was declared as proclaimed person.

2. Learned counsel appearing for the petitioner, *inter alia*, contends that the FIR (supra) was registered by Charanjit Singh, who was threatened by his son Avtar Singh with a sword to vacate his house. Fearing the threat, they locked the house and went to Jagdish Singh's house. Avtar Singh and his wife Bholi broke open the lock, setting the house on fire. As they approached Gurudwara Sahib Baba Jiwan Singh, Avtar Singh hit Jagdish Singh with a kirpan blow, causing him to suffer

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injuries. Thereafter, the petitioner was granted anticipatory bail on 17.09 2021 by the Judge, Special Court, Moga and thereafter, supplementary challan was presented against the petitioner on 06.10.2021 and she appeared and furnished personal bonds. However, due to COVID-19, she could not attend subsequent hearings, resulting in issuance of non-bailable warrants against her. Thereafter, on 08.05.2024, the petitioner was declared a proclaimed person.

3. Learned counsel for the petitioner further submits that the petitioner was never served with the summons or warrants issued by the learned trial Court, and as a result, she was wrongly declared as a proclaimed person on 08.05.2024. Aggrieved by the said impugned order dated 08.05.2024, the petitioner has approached this Court by way of instant petition. 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. He submits that the petitioner undertakes to appear before the trial Court on each and every date of hearing. Lastly, learned counsel for the petitioner submits that the serving official's report failed to mention the address or village, despite the petitioner having left her residence after selling the property.

4. Notice of motion.

5. Mr. Sandeep Kumar, DAG, Punjab, who is present in the Court, accepts notice on behalf of respondent – State and supports the order passed by the learned trial Court by contending that the petitioner



did not put in appearance before the learned trial Court intentionally and deliberately and, therefore, having left with no other option, the proclamation was issued to secure her presence.

6. 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.

7. 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.

8. 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 herself. 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 (CrI.) 319*, it has been held that the conditions specified

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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.

9. 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 herself come forward and has undertaken to appear before the learned trial Court on each and every date of hearing.

10. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 08.05.2024, vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set-aside.

11. The petitioner is directed to appear before the learned trial Court within a period of 02 weeks from today and on doing so, she shall be admitted to bail on furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.5,000/- to be deposited with PGI Poor Patient Welfare Fund, for wasting precious time of the Court.

12. The receipt of payment of costs imposed upon the petitioner must be presented before learned trial Court. Learned Court below is directed to grant bail to the petitioner only upon verification of the payment of said costs.

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13. However, in case, the petitioner fails to surrender before the learned trial Court within the stipulated time period, the interim protection granted by this Court, shall be deemed to be vacated.

(HARPREET SINGH BRAR)
JUDGE

28.01.2025
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No