

2025:PHHC:040115



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

129

CRM-M-11310-2025 (O&M)
Date of decision: 25.03.2025

Amitoj Singh**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Vipin Mahajan, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. **CRM-11282-2025**

Allowed as prayed for.

Documents are taken on record.

2. **CRM-M-11310-2025 (O&M)**

The instant petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of order dated 04.07.2024 (Annexure P-7), passed by the Court of learned Sub Divisional Judicial Magistrate, Batala in case arising out of FIR No. 15 dated 08.02.2021, registered under Sections 307, 324, 323, 506, 427, 148 and 149 of IPC (Section 307 of IPC deleted and Section 325 of IPC added later on) at Police Station City Batala, Police District Batala, District Gurdaspur, whereby the petitioner had been declared a proclaimed offender.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in the aforementioned case. The petitioner was initially

2025:PHHC:040115



found innocent during investigation and had gone abroad on 13.12.2022. However, later on, proclamation proceedings were initiated against him at the instance of prosecution. The petitioner was not aware about pendency of the aforementioned trial against him as he was never served with any notice/warrants issued by the learned trial Court. He came to about the same only when he returned to India on 18.01.2025. More so, the petitioner had been declared a proclaimed offener without following the proper procedure prescribed under Section 82 of Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

4. Learned Senior Deputy Advocate General, Punjab has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the learned trial Court. Therefore, he was rightly declared a proclaimed offender. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record.

6. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the learned trial Court from the date of initiating proceedings under Section 82 Cr.P.C. as against the petitioner till the date of declaring him a proclaimed offender, I am of the considered opinion that the impugned order dated 04.07.2024 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

7. After going through the material placed on record as well as the copies of zimni orders passed by the learned trial Court, it is revealed that on

2025:PHHC:040115



20.05.2024, since the non-bailable warrants issued against the petitioner were received back unserved, the learned trial Court had ordered for issuance of proclamation against him for 04.07.2024. A bare perusal of this order shows that the learned trial Court before ordering for publication of proclamation has not recorded its proper satisfaction that that the petitioner had absconded or was concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence, which was in violation of the provisions of Section 82(1) of Cr.P.C. Reliance in this regard can be placed upon ***Rohit Kumar Vs. State of Delhi : 2008 Crl. J. 2561.***

8. A perusal of order dated 20.05.2024 further reveals that it was reported to the learned trial Court that the petitioner had gone abroad. However, no efforts whatsoever were made by the Court concerned to know about the address of the petitioner in abroad, where the process could be sent to him. No letter to Ministry of External Affairs qua service of notice/warrants/proclamation against the petitioner is shown to have been written by the trial Court. As such, it can reasonably be presumed that the process never reached the petitioner and hence, he had no occasion to conceal himself. As such, the action of the trial Court by switching to the proclamation proceedings under Section 82 Cr.P.C. can itself be stated to be bad in the eyes of law. Reliance in this context can be placed upon ***Manjit Kaur vs. State of Punjab : 2013 SCC Online (P&H) 8663.***

9. Further, a perusal of the statement of the serving police official reveals ASI Sucha Singh that the proclamation was not read over in some conspicuous place of the town or village in which the petitioner was supposed to be residing. As per Section 82 (2) of Cr.P.C. for publication, the

2025:PHHC:040115



proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. Reliance in this regard can be placed upon ***Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368.***

10. Accordingly, in view of the discussion as made above and also in view of the ratio of law as laid down in above cited authorities, the present petition is allowed and the impugned order dated 04.07.2024 (Annexure P-7), passed by the Court of learned Sub Divisional Judicial Magistrate, Batala in case arising out of FIR No. 15 dated 08.02.2021, registered under Sections 307, 324, 323, 506, 427, 148 and 149 of IPC (Section 307 of IPC deleted and Section 325 of IPC added later on) at Police Station City Batala, Police District Batala, District Gurdaspur, whereby the petitioner had been declared a proclaimed offender, is quashed with all consequential proceedings arising therefrom.

11. Keeping in view the fact that the petitioner is ready to join the Court proceedings which would obviously help in speedy conclusion of trial, he is directed to surrender before the learned trial Court within a period of 15 days from today and on doing so, the learned trial Court shall release him on bail, subject to his furnishing personal/surety bonds to its satisfaction.

2025:PHHC:040115



12. Till the appearance of the petitioner before the learned trial Court, his arrest shall remain stayed.

13. It is made clear that in case the petitioner fails to appear before the learned trial Court within the stipulated time, this petition shall be deemed to be dismissed.

14. However, this relief shall be subject to payment of cost of Rs. 5,000/-, to be deposited by the petitioner with the District Legal Services Authority, Gurdaspur.

25.03.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No