



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

122

CRM-M-42052-2025
Date of decision: 05.08.2025

Gursewak Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harpal Singh Sidhu, 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 05.11.2024 passed by Judicial Magistrate Ist Class, Moga in complaint bearing No.COMI/53/2020 dated 09.09.2020 filed under Sections 451, 427, 506, 148, 149 IPC and Section 25 of the Arms Act, 1959, vide which the petitioner was declared as proclaimed person.

2. Learned counsel for the petitioner submits that since 25.06.2024, the petitioner is working in Dubai and he was never served with the summons or warrants issued by the learned trial Court, and as a result, he was wrongly declared as proclaimed person on 05.11.2024. Aggrieved by the said impugned order dated 05.11.2024, 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. Lastly, learned counsel for the petitioner submits that the petitioner undertakes to appear before the trial Court on each and every date of hearing.

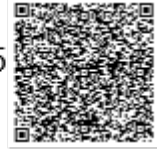
3. Notice of motion to respondent No.1 only.

4. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in the Court, accepts notice on behalf of respondent No.1 – 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 his presence.

5. 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.

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.

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

9. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 05.11.2024, vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set-aside.

10. The petitioner is directed to appear before the learned trial Court within a period of six weeks from today and on doing so, he shall be admitted to bail on furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.10,000/- to be deposited with PGIMER Poor Patient Welfare Fund, Chandigarh, for wasting precious time of the Court.

11. 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.

12. 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

05.08.2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No