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

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CRM-M-3481-2025 (O&M)
Date of decision: 03.04.2025

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

Present:- Mr. Naresh Kumar Manchanda, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. 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 15.02.2024 (Annexure P-6), passed by the Court of learned Judicial Magistrate First Class, Jagraon in case titled as ***State vs. Boota Singh***, arising out of FIR No. 90 dated 09.11.2020, registered under Sections 323, 325, 34 of IPC at Police Station Hathur, District Ludhiana, whereby the petitioner had been declared a proclaimed absconder.

2. 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 on bail and was regularly appearing before the learned trial Court. However, he absented himself on 15.12.2022 due to ill health, consequent to which, his bail was cancelled and non-bailable warrants were issued against him for 30.03.2023. Subsequently, the petitioner could not appear before the Court as he was never served with any notice/warrants issued by the learned trial Court. More so, the

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petitioner had been declared a proclaimed person without following the proper procedure prescribed under Section 82 of Cr.P.C. He is ready to join the Court proceedings. Hence, it is urged that the impugned order is liable to be set aside.

3. *Per contra*, learned Senior Deputy Advocate General, Punjab has resisted the petition by submitting that there is no infirmity in the impugned order and the petitioner has rightly been declared a proclaimed absconder as he was running away from the process of Court. It is, thus, urged that the petition is liable to be dismissed.

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

5. 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 absconder, I am of the considered opinion that the impugned order dated 15.02.2024 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

6. 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 12.09.2023, 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 18.12.2023. 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

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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.***

7. A perusal of the record reveals that a fresh proclamation was issued on 18.12.2023 for 06.01.2024. When the case was taken up on 06.01.2024, the proclamation was received executed. However, since the mandatory period of 30 days had not elapsed the case was adjourned to 15.02.2024. On a perusal of the statement of the serving police official, it is revealed that the proclamation was executed only on 05.01.2024, requiring the petitioner to cause his appearance before the trial Court on 06.01.2024, which means that the petitioner was not granted mandatory period of 30 days to cause his appearance before the learned trial Court. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C., as per which, a specified time of not less than 30 days is required to be given to the accused from the date of publishing such proclamation which is mandatory in nature. Reliance in this regard can be placed upon ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826*** and ***Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339.*** Further, while adjourning the case to 15.02.2024 to complete the mandatory period of 30 days, the learned trial Court failed to consider the fact that it could not have extended the time by simply adjourning the case as a fresh proclamation was required to be published once the period between issuance of publication of proclamation and the specified period of hearing was less than 30 days. Reference in this

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context can be made to ***Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166.***

8. Further, a perusal of the statement of the serving police official reveals 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 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.***

9. 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 15.02.2024 (Annexure P-6), passed by the Court of learned Judicial Magistrate First Class, Jagraon in case titled as ***State vs. Boota Singh***, arising out of FIR No. 90 dated 09.11.2020, registered under Sections 323, 325, 34 of IPC at Police Station Hathur, District Ludhiana, whereby the petitioner had been declared a proclaimed absconder, is quashed with all consequential proceedings arising therefrom.

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10. 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 04 weeks from today and on doing so, the learned trial Court shall release him on bail, subject to his furnishing fresh personal/surety bonds to its satisfaction.

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

12. 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.

13. However, this relief shall be subject to payment of cost of Rs. 10,000/-, to be deposited by the petitioner with the District Legal Services Authority, Ludhiana.

03.04.2025*Waseem Ansari***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*