

2025:PHHC:098924



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

CRM M-38032 of 2025

Date of Decision: 31.07.2025

Harlovepreet Singh @ Love through Special Power of Attorney

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Jaspal Singh Pannu, Advocate, for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

Ms. Ramandeep Kaur, Advocate, for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 528 of the BNSS 2023 and 482 Cr.P.C. with a prayer to quash the order dated 25.01.2023 (Annexure P-8) passed by the Court of Judicial Magistrate 1st Class, Batala, whereby, the petitioner has been declared as proclaimed person in case arising out of the FIR No. 114 dated 18.07.2020 under Sections 323, 324, 148 and 149 IPC (Section 326 IPC added later on) registered at Police Station Dera Baba Nanak, Police District Batala, Punjab.

2. Learned counsel for the petitioner contends that the petitioner was falsely involved in the above mentioned FIR No. 114 dated 18.07.2020 under Sections 323, 324, 148 and 149 IPC (Section 326 IPC added later) registered at Police Station Dera Baba Nank, Police District Batala, Punjab (Annexure P-1). After the registration criminal case, the petitioner applied for grant of concession of anticipatory bail and vide order dated 06.04.2021 (Annexure P-2) passed in CRM M-26104 of 2020, this Court granted him the concession of anticipatory bail. Thereafter, the petitioner left for Australia on 23.12.2021 and has not returned to India. Learned counsel has relied upon the passport (Annexure P-5) of the petitioner in this regard. In his absence, the Investigating Agency presented the *challan* against the petitioner on 07.02.2022. Thereafter, notice was issued to the petitioner to appear before the trial Court. Ultimately, vide order dated 31.10.2022, the Court ordered issuance of proclamation under Section 82 Cr.P.C. against the present petitioner for 17.12.2022. However, on 17.12.2022, ASI Balwinder Pal, i.e., the serving official appeared before the trial Court and submitted that the proclamation was duly effected against the petitioner on 05.12.2022. Since, the statutory period of 30 days had not elapsed for the appearance of the petitioner before the trial Court, the case was adjourned to 25.01.2023 for awaiting the appearance of the petitioner. Vide the impugned order dated 25.01.2023 (Annexure P-8), the trial

Court observed that the statutory period of 30 days to await the presence of the accused had already elapsed and as such he was declared as proclaimed person. Learned counsel submits that such adjournment to fulfill the statutory requirement of 30 days is illegal and cannot be construed as sufficient compliance of Section 82 of Code of Criminal Procedure.

3. I have heard learned counsel for the parties and perused the record.

4. It has been held by this Court in the matter of **Ashok Kumar Vs. State of Haryana and Anr.2013(4) RCR (Criminal) 550** as under:

3. "As per order dated 04.01.2013 passed by the learned Additional Chief Judicial Magistrate, Panipat the case has been adjourned for 06.03.2013 for issuing of proclamation under Sections 82 and 83 Cr.P.C. against petitioner Ashok Kumar. The order dated 06.03.2013, shows that proclamation issued against Ashok Kumar received back duly executed. Statement of Serving Constable was also recorded. Period of 30 days had not elapsed from the date of publication. Therefore, the case was adjourned to 13.3.2013. On that day, the petitioner was declared as proclaimed offender. The original record also shows that the statement of the serving official, namely, ASI Dilbag Singh was recorded on 6.3.2013, who stated that on 9.2.2013, he visited the place of residence of the accused along with proclamation. After

reading publicly, the proclamation was affixed at conspicuous part of the house of the accused where he ordinarily resides. A copy of the proclamation was also affixed at conspicuous part of the Court house, which means that the publication was effected on 9.2.2013 for 6.3.2013, which shows that after the publication of the notice, the accused was not given the mandatory period of 30 days to appear before the Court. The mere fact that the Court adjourned it after the period of 30 days will not be treated as compliance of the provisions of Section 82 (1) Cr.P.C. where it is provided that :-

“82. Proclamation for person absconding. --

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(1) xx xx xx xx xx xx xx

(2) xx xx xx xx xx xx xx

4. “In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C. There was no order in the publication

for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside”.

5. Still further, it has been held by this Court in the matter of **Avtar Singh Vs. State of Punjab and Anr. in CRM-M-1866-2017** which is as under:-

“The above quoted provision is clear that through the proclamation made prior to declaration of a person as a proclaimed offender, he should be given not less than thirty days from the date of its proclamation to appear at a specified place and a specified time.

In the case in hand, thirty days were not given to the petitioner to appear before the Trial Court as the proclamation was made on 13.05.2011 requiring him to appear before the Trial Court on 14.05.2011. Thus, the proclamation and the subsequent order dated 03.09.2011 (Annexure P-2) declaring the petitioner to be a proclaimed offender do not confirm with the mandate of Section 82 (1) of the Code”.

6. In the present case also, this Court has no hesitation to hold that the mandatory provisions of Section 82 of Cr.P.C. have not been complied by the trial Court. Thus, in view of the mandatory provisions of Section 82 Cr.P.C. and the ratio laid down by this Court in the matter of **Ashok Kumar and Avtar Singh (supra)**, it can be safely concluded that the trial Court had not complied with the provisions of Section 82 Cr.P.C., while declaring the petitioner as proclaimed person.

7. In view of the above discussion, the order dated 25.01.2023 (Annexure P-8) passed by the Court of Judicial Magistrate 1st Class, Batala, is held illegal and unsustainable. The impugned order dated 25.01.2023 (Annexure P-8) and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner only.

8. Consequently, the petitioner is permitted to surrender before the learned trial Court/Area Magistrate/Duty Magistrate within a period of eight weeks from today and on his surrender, he shall be admitted to bail by the concerned Court on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Court. The Court, which admits the petitioner to bail, shall also be at liberty to impose such reasonable conditions, as provided by law. In case, the petitioner does not surrender within a period of eight weeks from today, the present petition shall be deemed to be dismissed by this Court.

9. The petition is disposed off in the above terms.

31.07.2025

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No