



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

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CRM-M No.4635 of 2025
Date of decision: 28.01.2025

Rohtash @ Rohit Sharma

....Petitioner

Versus

Pardeep Badhwar

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Neeraj Jain, 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 25.11.2024 passed by learned Judicial Magistrate Ist Class, Rohtak (Annexure P-2) in criminal complaint bearing NACT No.1528 of 2019 dated 27.09.2019, filed under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the NI Act'), titled as "Pardeep Badhwar vs Rohit Sharma" whereby proclamation proceedings under Section 84 of BNSS, 2023, have been initiated against the petitioner.

2. Learned counsel for the petitioner contends that the respondent filed a complaint before the learned Judicial Magistrate Ist Class, Rohtak, claiming to have invested Rs.3,80,000/- with the petitioner and received a return of Rs.5,67,254/-. Based on this, the respondent invested an additional amount of Rs.4,00,000/- in cash in April 2019. The petitioner issued five cheques, which were later

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dishonoured on 15.07.2019 and 24.07.2019 due to issues with the drawer's signature, insufficient documents, and insufficient funds. A legal notice was sent, and the complaint was filed on 26.09.2019. He submits that the petitioner neither received any notice nor was aware of the complaint or proceedings pending before the learned trial court, which resulted in his non-appearance. Additionally, the petitioner's address was not mentioned in the case, and the petitioner had no affiliation with any company named Haventure Exports India Pvt. Ltd., however, despite these facts, the learned trial Court proceeded with proclamation proceedings under Section 84 of BNSS, 2023 against the petitioner on 25.11.2024 (Annexure P-2).

3. Learned counsel appearing for the petitioner further submits that the impugned order is liable to be set aside on the ground that the mandate of Section 82 Cr.P.C. has not been followed in its letter and spirit by the learned trial Court. In support of his arguments, counsel for the petitioner relies upon the judgment passed by this Court in *Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319* and the judgment passed by the Gujarat High Court in *Govindbhai Patel Vs. State of Gujarat 2004 (4) RCR (Criminal) 830*.

4. Learned counsel appearing for the petitioner also submits that the non-appearance of the petitioner was not deliberate and intentional and thus, aggrieved by the said order, he 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 of unintentional non-appearance

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of the petitioner, as stated above and the petitioner undertakes to appear before the learned trial Court on each and every date of hearing.

5. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, present petition is being decided *in limine* without issuing notice to the respondent in order to save judicial time of the Court and also the litigation costs of the respondent.

6. I have heard learned counsel for the petitioner and perused the record of the case with his able assistance.

7. After considering the submissions made by the petitioner, it is evident that the petitioner was neither notified about the complaint nor was aware of the proceedings pending before the learned trial court, which resulted in the non-appearance. Furthermore, the address of the petitioner was not mentioned in the case, and there was no affiliation with the company, Haventure Exports India Pvt. Ltd., as alleged. Many a times, the accused can be prevented by sufficient reasons to put an appearance before the Court on a given date and, therefore, it necessarily cannot be construed as a deliberate and wilful absence. The explanation offered for non-appearance before the learned trial Court is justified and, therefore, the same is accepted.

8. 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

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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.

9. The sole purpose of issuance of non-bailable warrants or proclamation proceedings 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 trial Court on each and every date.

10. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 25.11.2024 (Annexure P-2), vide which proclamation proceedings have been initiated against the petitioner is 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, 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 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.

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.

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(HARPREET SINGH BRAR)
JUDGE

28.01.2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No