



150 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-28557-2025 (O&M)
Date of Decision: 22.05.2025

VISHNU @ VISHNU KUMAR

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Yaseen Sethi, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. AG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 482 of Cr.P.C. (now Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023) seeking quashing of the order dated 08.01.2025 (Annexure P-3), vide which non-bailable warrants were issued against the petitioner and further seeking quashing of the orders dated 06.02.2025, 05.03.2025 and 18.03.2025 (Annexures P-4, P-5 and P-6) vide which proclamation under Section 82 was issued against the petitioner and further seeking quashing of order dated 26.03.2025 (Annexure P-7), vide which petitioner has been declared as proclaimed person in case bearing FIR No. 322 of 2018 registered under Section 379 of Indian Penal Code registered at Police Station, Shimlapur, District Ludhiana.

2. Learned counsel appearing for the petitioner *inter alia* contends that petitioner was granted regular bail in the aforementioned case by learned Additional Sessions Judge, Ludhiana vide order dated 27.11.2018 (Annexure P-2). However, on 08.01.2025, the petitioner could not appear before the learned Court below due to noting down the wrong date by the counsel representing him before the learned trial Court and on the same day, learned Additional Sessions Judge, without securing the presence of the petitioner, through bailable warrants, has straight away cancelled his bail bonds and



forfeited them to the State. Thereafter, learned Court below vide order dated 06.02.2025 issued process of proclamation and notice to surety was also issued and the matter was adjourned to 05.03.2025. Ultimately vide order dated 26.03.2025 (Annexure P-7) learned trial Court declared the petitioner as proclaimed person.

3. Learned counsel for the petitioner *inter alia* contends that proclamation was issued against the petitioner without following the drill of Section 82 Cr.P.C. (now Section 84 of BNSS, 2023) and non-compliance of the mandatory provisions vitiates the entire proceedings, which suffers from incurable illegality as he was never served and the impugned orders are liable to be set aside.

4. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in the Court, accepts notice on behalf of respondent-State and supports the orders passed by the learned trial Court by contending that the petitioner did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, arrest warrants and proclamation were issued to secure his presence.

6. I have heard learned counsel for the parties and perused the record of the case with their able assistance, the matter is taken up for final disposal.

7. 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.

8. A perusal of the impugned orders 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 orders suffering from incurable illegality. In the judgment passed by this Court in ***Sonu Vs. State of Haryana 2021 (1) RCR (Crl.) 319***, it has been held that the conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

9. 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.

10. In view of the aforesaid facts and circumstances and in view of the ratio of law laid down in ***Major Singh @ Major (supra)***, the present petition is allowed and the order dated 08.01.2025 (Annexure P-3) vide which non-bailable warrants were issued against the petitioner, orders dated 06.02.2025, 05.03.2025 and 18.03.2025 (Annexures P-4, P-5 and P-6) vide which proclamation was issued against the petitioner and order dated



CRM-M-28557-2025 (O&M)

-4-

26.03.2025 (Annexure P-7) vide which petitioner was declared as proclaimed person are hereby quashed/set aside.

11. The petitioner is directed to appear before the trial Court within a period of four weeks from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.5,000/- to be deposited with the Poor Patients Welfare Funds, PGIMER, Chandigarh for wasting precious time of the Court.

12. Receipt of payment of cost must be presented before learned trial Court and learned Court below is directed to verify the same.

13. It is made clear that in case, the petitioner fails to appear before the trial Court within a stipulated period, the interim protection granted by this Court shall be deemed to be vacated.

(HARPREET SINGH BRAR)
JUDGE

22.05.2025

Ajay Goswami

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No