

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

119

CRM-M-21213-2024

Date of Decision: 30.04.2024

Surinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

**Present:** Mr. Kunwar Rajan, Advocate and  
Mr. Karnail Singh, Advocate for the petitioner.

Mr. Athar Ahmed, DAG, Punjab.

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1. By way of present petition, the petitioner seeks setting aside of the order dated 01.10.2014 passed by the learned Chief Judicial Magistrate, Ropar, whereby the petitioner has been declared as a proclaimed person.

2. Having been implicated as an accused in FIR No. 198 dated 22.09.2004 under Section 61/1/14 of Punjab Excise Act, registered at Police Station Sadar, Rupnagar, the petitioner was granted concession of regular bail. Challan in the aforementioned FIR was presented before the Illaqa Magistrate on 01.06.2005, however, in relation to his employment to earn his livelihood, the petitioner went to Germany in the year 2008 and since then has not returned so far. On account of his non-appearance before the trial Court, he was declared as proclaimed person vide order dated 01.10.2014 .

3. Impugning the same, learned counsel for the petitioner submits

that the proclamation under Section 82 of the Code of Criminal Procedure

was ordered against the petitioner on 04.08.2014 by the trial Court having recorded that the petitioner had gone abroad. He further submits that before effecting proclamation under Section 82 of the Code of Criminal Procedure, the procedure laid down under Section 105 of the Code of Criminal Procedure was required to be complied with for effecting service upon the petitioner through German Consulate and thus the impugned order was unsustainable. Learned counsel also point out that the proclamation under Section 82 was ordered on 04.08.2014 for 03.09.2014 being date of appearance which was clearly short of 30 days statutory period as contemplated under Section 82 of the Code of Criminal Procedure and thus the order of issuance of proclamation, itself was bad in law and accordingly prays for setting aside of the impugned order.

4. Moreover, learned counsel for the petitioner on instructions from his client, submit that he volunteers to serve public cause by providing 01 adjustable/hydraulic OT table, 01 double led OT ceiling light and 01 vertical autoclave (stainless steel) to Civil Hospital, Rupnagar.

5. On the other hand, learned State counsel, vehemently oppose the prayer made by learned counsel for the petitioner and submits that the petitioner having been granted concession of regular bail in the FIR in hand was conscious of the factum of pendency of proceedings against him and he having gone abroad without seeking permission of the trial Court, thus does not entitle him of any relief in the present petition as he deliberately chose to evade the proceedings pending before the trial Court and accordingly the impugned order warrants no interference.

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

petitioner, the orders dated 04.08.2014, 03.09.2014 and 01.10.2014 passed by the trial Court are reproduced here as under:

“Accused Narinder Singh on bail with counsel

Warrant of arrest issued for summoning of accused Surinder Singh received back with the report that he was gone abroad. Thus as is evident that the accused has willfully concealed himself in order to evade his arrest in the case in hand. Accordingly in order to procure his presence through coercive method, he be summoned for 3.9.2014 through publication of proclamation under Section 82 Cr.P.C.

Sd/-

(Rajvinder Singh)

CJM/Ropar/4.08.2014

Accused Narinder Singh on bail with counsel

Publication of proclamation under Section 82 Cr.P.C issued against accused, received back executed. Period of 30 days not extinguished. Thus to come up on 1.10.14 for awaiting presence of accused. Surinder Singh

Sd/-

(Rajvinder Singh)

CJM/Ropar/3.9.2014

Accused Narinder Singh on bail with counsel

Despite fixation of the case for awaiting appearance of accused Surinder Singh he has failed to come present before the court. In order to compel the presence of said accused proclamation under Section 82 Cr.P.C has already been executed Statement of executing official was recorded on last date of hearing. Period of 30 days since publication of proclamation has already extinguished. Despite that be said accused has failed to come present before the court. Accordingly finding no justification for further awaiting appearance of accused Surinder Singh, he is hereby declared as 'proclaimed person'. Necessary intimation in this regard be sent to the concerned police Station as well as PO wing. PWs are ordered to be summed 20.10.2014.

Sd/-

(Rajvinder Singh)

CJM/Ropar/1.10.2014”

8. A perusal of the aforementioned orders show that at the time of issuance of proclamation under Section 82 of the Code of Criminal

Procedure against the petitioner, the trial Court was fully conscious of the fact that the petitioner has gone abroad and thus rather than issuance of proclamation under Section 82 Cr.P.C, the trial Court at the first instance should have proceeded under Section 105 of the Code of Criminal Procedure for effecting service upon the petitioner through German Consulate. Moreover, the proclamation was ordered on 04.08.2014 for 03.09.2014 being the date of appearance which was short of 30 days statutory period as contemplated under Section 82 of the Code of Criminal Procedure, required to be provided to an individual to put an appearance. Still further, the petitioner was declared as proclaimed person on 01.10.2014 whereas no proclamation under Section 82 of the Code of Criminal Procedure for the said date being fixed for appearance of the petitioner was ever issued by the trial Court. Thus, the declaration of petitioner as proclaimed person was wholly in violation of the statutory mandate laid down under Section 82 of the Code of Criminal Procedure read with Section 105 Cr.P.C thereof. Accordingly, the present petition is allowed and the impugned order dated 01.10.2014 is set aside and the petitioner is directed to surrender before the trial Court within a period of six weeks from today who would furnish his bail bonds/surety bonds to the satisfaction of the trial court and till then no coercive steps be taken against him.

9. The aforesaid order, shall be, however, subject to providing 01 adjustable/hydraulic OT table, 01 double led OT ceiling light and 01 vertical autoclave (stainless steel) to the Civil Hospital, Rupnagar, within a period of two weeks from today as volunteered to serve public cause by the petitioner against due receipt issued by the concerned Civil Surgeon, who shall prepare an inventory in this regard for its regular inspection by the Director

General, Punjab at the earliest for maintaining records in this regard.

30.04.2024

(HARKESH MANUJA)

Rajeev (rvs)

JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |