

**CRM-M-25021-2019 (O&M)**  
**Date of decision: 15.04.2024**

**...PETITIONER**

STATE OF PUNJAB AND ANOTHER

## ...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Gagandeep Singh, Advocate  
for the petitioner.

Mr. Ramandeep Singh, Sr. DAG Punjab.

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**HARPREET SINGH BRAR J. (ORAL)**

1. The present petition has been filed under Section 482 of Cr.P.C. seeking setting aside of the order dated 20.09.2018 (Annexure P-4) passed by learned Judicial Magistrate Ist Class, Moga, in case bearing FIR No. 126 dated 27.11.2016 registered under Section 306 of Indian Penal Code at Police Station Ajitwal District Moga, whereby the petitioner has been declared as proclaimed offender.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner is serving in the Indian Army and at the time of incident he was posted at the forward Line of Control (LOC) due to which, he could not come back and join the proceedings of the case. It is further contended that petitioner also approached his higher officials seeking leave from his job, so that he could come back to Moga and join the proceedings, but he was not granted leave as he was posted at the LOC. It is further contended that now the petitioner has returned back to Moga and has been able to get leave from his Regiment. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court.

3. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

4. However, learned State counsel supports the order 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, proclamation was issued to secure his presence.

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

6. 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.

7. A perusal of the impugned order 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 order 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.

8. 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 and has undertaken to appear before the trial Court on each and every date.

9. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 20.09.2018 (Annexure P-) vide which the petitioner was declared proclaimed offender is set aside.

10. The petitioner is directed to appear before the trial Court within a period of 06 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. 10,000/- to be deposited with the District Legal Services Authority, Moga, for wasting precious time of the Court.

April 15, 2024  
Ajay Goswami

(HARPREET SINGH BRAR)  
JUDGE

|      |                           |        |
|------|---------------------------|--------|
| (i)  | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable        | Yes/No |