



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

CRM-M-45422-2024
Date of decision: 13.09.2024

Mandip Singh @ Mandeep Singh and others Petitioners

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Angad Parmar, Advocate
for the petitioners.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 seeking quashing of impugned order dated
15.09.2014 (Annexure P-6) passed by the learned Chief Judicial Magistrate
(NRI Cases), Jalandhar, in case bearing FIR No.9 dated 09.05.2014 under
Sections 498-A/34 of IPC registered at Police Station NRI Commissionerate,
Jalandhar City, vide which the petitioner has been declared as proclaimed
absconder.

2. Learned counsel appearing for the petitioner *inter alia* contends
that the marriage of petitioner No.1 was solemnized with respondent No.2 on
08.08.2012 and after the marriage, the FIR (*supra*) was registered stating
therein that the petitioners have left the complainant/respondent No.2 in India.
The petitioners left India in the year 2012 and since then, they are residing in
USA. On 15.07.2014, on account of receipt of report regarding non-bailable
warrants as 'unexecuted', the learned trial Court issued proclamation against



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the petitioner under Section 82 Cr.P.C. for 15.09.2014 and ultimately, on 15.09.2024, the learned trial Court declared the petitioners as proclaimed absconders. Aggrieved by the said impugned order dated 15.09.2014 (Annexure P-6), the petitioners have approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioners 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 trial Court. It is further submitted that it is a settled law that when the accused persons are residing in a foreign country, attempt is to be made to serve summons upon them through the Ministry of External Affairs and in the present case, no such attempt has been made. In support of his arguments, counsel for the petitioners relies upon the judgment passed by this Court in ***Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319***. It is further submitted that the petitioners undertake to appear before the trial Court on each and every date.

4. Notice of motion.

5. Mr. Sandeep Kumar, DAG, Punjab, who is present in Court, accepts notice for respondent No.1-State and supports the order passed by the learned trial Court by contending that the petitioners 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 their presence.

6. 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.

7. While the scheme of criminal justice system necessitates



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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 order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioners have absconded or is concealing themselves. 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 (supra)***, 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 petitioners in the present case have themselves come forward and have 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, without issuing notice to respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of

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respondent No.2 and the impugned order dated 15.09.2014 (Annexure P-6) vide which the petitioners were declared as proclaimed absconders, is hereby set aside.

11. The petitioners are directed to appear before the trial Court within a period of six weeks from today and on their doing so, they shall be admitted to bail on their furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.20,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

12. The receipt of payment of costs imposed must be presented before the learned trial Court. The learned Court below is directed to grant bail to the petitioners only upon verification of the payment of said costs.

(HARPREET SINGH BRAR)
JUDGE

13.09.2024*Neha*

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