

**CRM-M-52677-2023**  
**Date of decision: 13.03.2024**

**...PETITIONER**

V/S

## ...RESPONDENT

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

Present: Mr. Neeraj Yadav, Advocate  
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

\*\*\*\*

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

This is a petition filed under Section 482 Cr.P.C. for quashing of order dated 16.09.2023 (Annexure P-3), whereby, the petitioner has been declared as proclaimed person in case FIR No.96 dated 09.05.2022 under Sections 307, 323, 506, 34 of Indian Penal Code, 1860, and Section 25 of Arms Act, 1959, registered at Police Station Chheharta, Amritsar.

2. On 17.10.2023, the following order was passed :

*“This is a petition filed under Section 482 Cr.P.C. for quashing of order dated 16.09.2023 (Annexure P-3) whereby the petitioner has been declared as proclaimed person in case FIR No.96 dated 09.05.2022 under Sections 307, 323, 506, 34 of Indian Penal Code, 1860, and Section 25 of Arms Act, 1959, registered at Police Station Chheharta, Amritsar.*

*Learned counsel for the petitioner submits that the petitioner has joined investigation and no specific role was attributed to him in the occurrence. He was informed that notice would be sent to him when the final report under Section 173 Cr.P.C. is filed in the concerned Court. He further submits that petitioner was never served and thus, had no occasion to present himself before the*

*Court. The petitioner never had intention to avoid the due process of law. It is further submitted that order declaring petitioner as proclaimed person the does not record that he had absconded or is concealing himself so that warrant could not be executed. Thus, the process issued under Section 82 Cr.P.C. is not sustainable. Petitioner is ready to surrender and join proceedings and abide by any condition that may be imposed by the Court.*

*Notice of motion returnable for 12.12.2023.*

*Mr. Amish Sharma, AAG, Punjab, puts in appearance on behalf of respondent, pursuant to advance copy of the petition having been sent in this case. Learned State counsel on instructions from ASI Manjeet Singh, submits that there were three accused in the present case. Challan was presented against co-accused Gagandeep Singh @ Gagan, who is facing trial whereas co-accused Kamal Masih along with the petitioner were declared as proclaimed persons.*

*Learned State counsel is not in a position to refute the aforesaid position from instructions so received and is further not able to specify the date when the process was issued and publication effected thereof. He seeks time to file reply/status report.*

*In the meanwhile, petitioner is directed to surrender before the Trial Court on 25.10.2023 and on doing so, he shall be admitted to interim bail to the satisfaction of the Trial Court.*

*To enable the petitioner to put in appearance before the Court below, his arrest pursuant to the impugned proceedings shall remain stayed till 25.10.2023.*

*Needless to observe that in case the petitioner fails to comply with the above said direction, the protection granted herein shall cease to exist.”*

3. In compliance of the aforementioned order, the petitioner has put in appearance before the learned Judicial Magistrate Ist Class, Amritsar and has furnished his surety/bail bonds.

4. 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.

5. 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.

6. In view of the aforesaid facts and circumstances, the present petition is allowed, the impugned order dated 16.09.2023 (Annexure P-3) vide which, the petitioner was declared proclaimed person, is set aside. Order dated 17.10.2023 of this Court, is hereby made absolute.

7. Present petition stands disposed of accordingly.

March 13, 2024  
manisha

(HARPREET SINGH BRAR)  
JUDGE

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