

2024:PHHC:170666



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

Sr. No.162

**CRM-M-64487-2024(O&M)
Date of decision : 19.12.2024**

MXXX KXXX

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Rakesh Gupta, Advocate, for the petitioner.

KIRTI SINGH, J. (Oral)

The present petition has been filed under Section 528 of BNSS, 2023 for quashing the impugned order dated 24.09.2024 (Annexure P11) passed by the learned Judicial Magistrate First Class, Nabha in case FIR No.170 dated 14.09.2019, under Section 18 of NDPS Act, 1985 registered at Police Station Sadar Nabha, District Patiala, whereby the petitioner has been declared as proclaimed person.

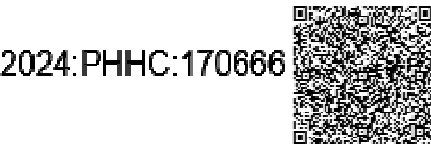
2. Learned counsel for the petitioner submits that the petitioner was granted bail on in abovesaid FIR by the learned trial Court vide order dated 12.12.2019. However, the petitioner remained in custody in connection with another FIR till 27.10.2021 when he was released on bail. The trial of the case was adjourned multiple times in view of the standing instructions relating to Corona Virus Pandemic. Learned trial Court inadvertently issued bailable warrants vide order dated 10.03.2021 25.05.2021 & 26.07.2021. A report was received by the learned trial Court that the petitioner is lodged in New District Jail, Nabha and production warrants were issued against him. However, vide order dated 01.11.2021

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report was received by the learned trial Court that the petitioner has already been released on bail on 27.10.2021. Thereafter, bailable warrants were issued which were received back with report that the petitioner could not be served due to his absence and non-bailable warrants were issued which was received back with report that father of the petitioner has stated that the petitioner has gone to some other State. Consequently, proclamation was issued and due to non-appearance of the petitioner he was declared as a proclaimed person vide order dated 24.09.2024. He submits that the mandatory provisions of Section 82 Cr.P.C. were not complied with and the trial Court has declared the petitioner a proclaimed person without satisfying itself that the petitioner is absconding or evading the process of trial. The petitioner is suffering from severe ailments and is ready to appear before the trial Court and abide by all the terms and conditions imposed upon them by the trial Court.

3. Notice of motion to the respondent at this stage.
4. At asking of the Court, Mr. Gurpartap S. Bhullar, AAG, Punjab accepts notice on behalf of respondent-State and submits that the learned trial Court has rightly passed the impugned order.
5. Heard the rival submissions made by learned counsel for the parties.
6. The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and punishments as are passed qua the accused. If the accused shows his sincere intention and desire to appear



before the Court, then it would not be unjustified to protect him from being arrested.

7. On hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner was in custody in connection with another FIR and the trial Court inadvertently, issued bailable warrants and production warrants as the factum of the custody and release of the petitioner was not correctly brought in knowledge of the trial Court. The petitioner is ready to appear before the trial Court and face the trial.

8. This Court finds that no useful purpose will be served by sending the petitioner in custody when the petitioner is ready to face trial.

9. In view of the above, the present petition is allowed and order dated 24.09.2024 (Annexure P11) is hereby set aside **subject to payment of cost of Rs.10,000/- by the petitioner to be deposited with the Poor Patient Welfare Fund, PGIMER Chandigarh** within a period of two weeks from today. The petitioner after depositing the cost as stated above would appear before the trial Court concerned within three weeks from today and file appropriate application along with receipt of payment of cost. The trial Court would release the petitioner on the same bail bonds/surety bonds. No coercive action would be taken against the petitioners till the next date. In case, the petitioner failed to appear before the trial Court on the next date or failed to deposit the cost as stated above, this order would be of no avail to the petitioner.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

19.12.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No