



**135 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

**CRM-M-958-2025 (O&M)
Date of Decision: 13.01.2025**

SOM NATH

...Petitioner

V/S

STATE OF PUNJAB

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Dinesh Nagar, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 528 of BNSS seeking quashing of the order dated 05.12.2023 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, SBS Nagar vide which the petitioner has been declared as proclaimed person in case bearing FIR No. 112 dated 25.10.2022 registered under Sections 13A-3-67 of the Punjab Gambling Act PS Sadar Banga District SBS Nagar.

2. Learned counsel appearing for the petitioner *inter alia* contends that upon presentation of challan in the FIR(supra) on 21.01.2023, trial commenced by learned trial Court and since the petitioner-Som Nath did not appear before the learned trial Court, therefore, PO proceedings were initiated against him. Learned counsel for the petitioner further contends that petitioner is a matriculate and he is not aware of the technicalities. It is further contended that after being released on bail in the aforesaid FIR, the petitioner had left for Kuwait on 06.12.2022 and the petitioner never visited India since then and neither any summons nor warrants from the trial Court were received by him. Thus, the petitioner

before the learned trial Court. It is further contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 (1) of Cr.P.C. has not been followed in its letter and spirit by the trial Court. It is also submitted that the petitioner undertake to appear before the trial Court on each and every date.

3. Notice of motion.

4. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in Court, accepts notice for respondent and 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 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. The impugned order dated 05.12.2023 (Annexure P-3) vide which the petitioner was declared proclaimed person, is hereby set aside along with all consequential proceedings arising therefrom. The petitioner is directed to appear before the trial Court within four weeks 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 *All Indian Pingalwara Charitable Society Jalandhar Branch, Makdoom Pura Dhobi Mohalla, Jalandhar*, for wasting precious time of the Court.

10. It is made clear that in case the petitioner does not appear before the learned trial Court within the stipulated period, the interim protection granted by this Court shall be deemed to be vacated.

13.01.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>