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

CRM-M-837-2020

Date of decision: 10.01.2025

Gurbakhshish Singh

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Prateek Pandit, Advocate
for the petitioner.

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

Mr. Barjinder Singh, Advocate
for respondent No.2.**HARPREET SINGH BRAR, J. (ORAL)**

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 15.02.2019 (Annexure P-2) passed by the learned Sub Divisional Judicial Magistrate, Sultanpur Lodhi, Kapurthala, whereby, the petitioner has been declared as proclaimed person in FIR No.168 dated 12.10.2016 (Annexure P-1) under Sections 406/420 of IPC registered at Police Station Sultanpur Lodhi District Kapurthala.

2. On 13.01.2020, the following order as passed:-

‘This is a petition for quashing of order dated 15.2.2019 (Annexure P-2) passed by Sub Divisional Judicial Magistrate, Sultanpur Lodhi, Kapurthala whereby the petitioner was declared proclaimed offender in case FIR No. 168 dated 12.10.2016 under Sections 406, 420 IPC registered at Police Station Sultanpur Lodhi, District Kapurthala.

At the outset learned counsel for the petitioner submits that the matter has been compromised between the parties and on the basis of said compromise, CRM-M-54623-2019 has been filed for quashing of the FIR in question. He further submits that vide order dated



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19.12.2019 (Annexure P-4), the parties were relegated to record their statements before the trial Court and power of attorney of Mr. Nitin Rampal, Advocate counsel for respondent No. 2 was also taken on record.

Learned counsel further submits that in view of the provisions contained in Section 82 (4) Cr.P.C., the P.O. order cannot be issued with regard to Sections 406 and 420 IPC.

Notice of motion for 1.4.2020.

Petitioner is directed to surrender before the trial Court on 17.1.2020. On doing so, the shall be released on bail subject to his furnishing bail bond/surety bonds to the satisfaction of the trial Court.

Meanwhile, the impugned order dated 15.02.2019 (Annexure P-2) is stayed.'

3. Learned counsel for the petitioner submits that the petitioner has already surrendered before the learned trial Court on 17.01.2020 in compliance of order dated 13.01.2020 passed by this Court.

4. The learned State counsel, on instructions from ASI Satnam Singh, affirms that the petitioner has surrendered before the learned Sub Divisional Judicial Magistrate, Sultanpur Lodhi, on the date fixed by this Court.

5. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

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



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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.

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 15.02.2019 (Annexure P-2) vide which the petitioner was declared as proclaimed person, is hereby set aside.

(HARPREET SINGH BRAR)
JUDGE

10.01.2025

Neha

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