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

CRM-M-3879-2024

Date of decision: 29.01.2025

Mohd. Suleman @ Mohammad Suleman

....Petitioner

Versus

State of Punjab

...Respondent

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

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 03.01.2024 (Annexure P-7) passed in FIR No.228 dated 23.11.2022 (Annexure P-1) under Section 22 of the NDPS Act, 1985, registered at Police Station Sarabha Nagar, District Ludhiana, whereby, the petitioner has been declared as proclaimed person by the learned Judge, Special Court, Ludhiana.

2. On 24.01.2024, the following order was passed:-

‘The petitioner assials order dated 03.01.2024 vide which he has been declared a ‘proclaimed person.’

Learned counsel for the petitioner submits that in the instant case, provisions of Section 82 Cr.P.C. have not been complied with in letter & spirit inasmuch as a clear period of 30 days for causing appearance has not been afforded to the accused/petitioner with effect from the date when the proclamation was actually effected.



Learned counsel submits that it is evident from the statement of the serving official i.e. Annexure P-9 that the proclamation had been effected on 01.12.2023, whereas, the proclamation notice (Annexure P-8) shows that the accused had been directed to appear on 11.12.2023. Learned counsel submits that the trial Court, however, further adjourned the matter on 11.12.2023, as the period of 30 days had not elapsed, whereas such like adjournment would not cure the inherent defect in the proceedings, as clear period of 30 days was required to be afforded with effect from the date of proclamation upto the date nominated for causing appearance.

Notice of motion for 01.05.2024.

Meanwhile, operation of the impugned order be kept in abeyance.'

3. The learned State counsel 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.

4. 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.

5. 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.

6. 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 (CrI.) 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.

7. 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.

8. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 03.01.2024 (Annexure P-7) vide which the petitioner was declared as proclaimed person, is hereby set aside.

9. The petitioner is directed to appear before the trial Court within a period of two weeks from today and on his doing so, he shall be admitted to

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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 Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

10. 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 petitioner only upon verification of the payment of said costs.

11. However, in case, the petitioner fails to surrender before the learned trial Court within the stipulated time period, the interim protection granted by this Court, shall be deemed to be vacated.

(HARPREET SINGH BRAR)
JUDGE

29.01.2025*Neha*

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