



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

CRM-M-6297-2025
Date of decision: 04.02.2025

Rashpal Kaur

...Petitioner

Versus

State of UT Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Rahul Garg, Advocate for the petitioner.

KARAMJIT SINGH, J. (ORAL)

1. The present petition under Section 528 of BNSS 2023 seeking setting aside of order dated 15.02.2020 Annexure P-3 passed by the Court of Judicial Magistrate Ist Class, Chandigarh vide which the petitioner was declared as proclaimed person in criminal complaint having NACT-5155/2017 titled Sukhbir Singh Vs. Rashpal Kaur Annexure P-1, under Section 138 of NI Act.

2. Notice of motion.

3. Mr. Ankur Bali, APP, UT Chandigarh, accepts notice on behalf of UT Chandigarh and appeared through video conferencing.

4. The counsel for the petitioner *inter alia* submits that the petitioner was not in knowledge about the passing of impugned order Annexure P-3, as no notice, summons or warrants issued by the Court were received by the petitioner. It is further submitted that the learned trial Court directly issued non bailable warrants of arrest of the petitioner on account of her absence on 04.12.2019 and the next date fixed was 20.12.2019. It is



further submitted that on that date i.e. 20.12.2019, non bailable warrants of arrest of petitioner were received back un-executed and on this, the learned trial Court issued proclamation against the petitioner under Section 82 Cr.P.C. for 15.02.2020 and finally on 15.02.2020, the petitioner was declared proclaimed person. The counsel for the petitioner further submits that the entire proceedings under Section 82 Cr.P.C were carried out by the trial Court in a mechanical manner and that the impugned order Annexure P-3 is not sustainable and deserves to be set aside.

5. The counsel appearing on behalf of UT Chandigarh submits that there is no illegality or perversity in the impugned order, as the same is passed by the trial Court in consonance with the provision of Section 82 Cr.P.C.

6. From the perusal of the zimni orders dated 04.12.2019, 20.12.2019 and 15.02.2020, it is clear that on account of the absence of the petitioner, no notice, summons or bailable warrants were issued by the trial Court at the first instance. Rather, the trial Court issued non bailable warrants of arrest of the petitioner in a mechanical manner. The issuance of non bailable warrants directly involves curtailment of liberty of a person. In the instant case, even the non bailable warrants of the petitioner were also issued only once and they were received un-executed. In this manner, the proceedings under Section 82 Cr.P.C. were initiated without having been satisfied that in the facts and circumstances of the case, it is warranted. The Hon'ble Supreme Court in ***Inder Mohan Goswami and Another Vs. State of Uttaranchal and others 2007 (4) RCR Criminal 548*** has held that non bailable warrant should be issued to bring a person to Court when summons



or bailable warrants would be unlikely to have the desired result. However, in the instant case, neither summons nor bailable warrants were issued in order to bring the petitioner before the Court.

7. In light of the above discussion, this Court is of the view that the impugned order is not sustainable and deserves to be set aside.

8. The petitioner is to be burdened with the cost as she has approached this Court after about 5 years of the passing of the order Annexure P-3.

9. For the foregoing reasons, the present petition is allowed and order dated 15.02.2020 Annexure P-3 passed by the trial Court in criminal complaint Annexure P-1 is set aside, subject to cost of Rs.10,000/- to be deposited by the petitioner in the Poor Patient Welfare Fund, PGIMER, Chandigarh.

04.02.2025

Yogesh

**(KARAMJIT SINGH)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**