

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

CRM-M-7498-2025
Date of decision: 10.02.2025

Balkar Singh

...Petitioner

Versus

The State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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

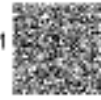
KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 528 of BNSS, 2023 seeking quashing of impugned order dated 19.09.2024 passed by the Court of Judicial Magistrate Ist Class, Ambala whereby petitioner was declared as proclaimed person in criminal complaint bearing COMA-884/2020 titled Ashish Sapra Vs. Balkar Singh, under Section 138 of NI Act.

2. Notice of motion.

3. Mr. Arjun Lakhanpal, Addl. A.G. Haryana, accepts notice on behalf of respondent No.1-State.

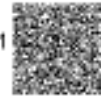
4. The counsel appearing on behalf of the petitioner submits that the petitioner was not aware of the pendency of aforesaid criminal complaint. The petitioner never received any notice, summons or warrants issued by any Court with regard to aforesaid criminal complaint. It is further submitted that the bailable warrants issued against the petitioner were received back un-executed. On this, the trial Court issued non bailable



warrants, but the same were also received back un-executed. The counsel for the petitioner while referring to judgment of this Court in CRM-M-41656-2023 titled *Pardeep Kumar Vs. State of Punjab and another*, decided on 23.08.2023 submits that preceding the issuance of proclamation under Section 82 Cr.P.C, the Court must deliberate upon its previous efforts to secure the presence through other legally permissible means. These efforts encompasses the issuance of summons, the execution of bailable and/or non bailable warrants against the accused. The Court must thoroughly document the results stemming from these endeavors accompanied by pertinent facts and comprehensive details. That it is incumbent upon the Court to satisfactorily ascertain that the individual in question has indeed absconded or is concealing himself to evade execution of warrants of arrest. The counsel for the petitioner further submits that in the instant case, proper procedure was not followed by the Court concerned before recording satisfaction that the petitioner has absconded or is concealing himself, so that such warrants cannot be executed, as per the mandate of Section 82(1) of Cr.P.C, before proceeding ahead with the issuance of proclamation of the accused. It is further submitted that in the given circumstances, the impugned order is not sustainable and deserves to be set aside.

5. I have considered the submissions made by counsel for the petitioner and gone through the documents attached with the present petition.

6. From the perusal of the concerned documents, it appears that the non bailable warrants of arrest of the petitioner were received back un-



executed. It is not clear from the perusal of the concerned order that under what circumstances the said non bailable warrants of arrest remained un-executed. Thus, the order dated 02.08.2024 whereby the Court concerned made satisfaction that the accused was intentionally and deliberately avoiding his service was passed by the learned trial Court in a mechanical manner and this Court in *Pardeep Kumar's case (supra)* has held that the phrase 'reason to believe' as provided in Section 82 of Cr.P.C signifies that the Court must derive its belief from the available evidence and material that the concerned person has absconded or is concealing himself to evade execution of warrants of arrest.

7. In light of the above, this Court is of the view that impugned order being not passed in consonance with the provisions of Section 82 Cr.P.C is not legally tenable and deserves to be set aside.

8. For the foregoing reasons, the present petition is allowed and order dated 19.09.2024 whereby the petitioner was declared as proclaimed person by the Court of Judicial Magistrate Ist Class, Ambala is hereby set aside. However, it is made clear that any observation made herein above is not to be construed as an expression of opinion on the merits of the case.

9. Keeping in view the nature of order being passed, no notice is required to be issued to the respondents. However, if they feels dis-satisfied with this order, they may move an application to recall the same.

10.02.2025

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No