

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

Date of decision: 14.02.2025

...Petitioner

Versus

...Respondent

Present: Mr. Vijay Rana, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of impugned order dated 08.01.2025 (Annexure P-12) passed by the learned Additional Sessions Judge, Ludhiana, vide which the petitioner has been declared as proclaimed offender in case bearing FIR No.87 dated 31.05.2020 under Sections 307/452/148/149/188 of IPC and Section 25 of Arms Act registered at Police Station Tibba, Tehsil and District Ludhiana (Annexure P-1) and all subsequent proceedings arising therefrom.

2. Learned counsel appearing for the petitioner *inter alia* contends that the petitioner was on anticipatory bail and was regularly appearing before the learned trial Court. Thereafter, the health of younger son of the petitioner who was residing abroad, got deteriorated due to depression because of his incomplete necessary documentation and the petitioner approached his counsel who was pursuing his case before the trial Court and narrated him the truth and his counsel assured the petitioner to go abroad and he will file appropriate

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application before the learned trial Court. Thereafter, the petitioner left for USA on 26.04.2024 and when the documentation of his son got completed, he came back to India on 04.12.2024 and came to know that his counsel did not file any application before the learned trial Court. On 18.03.2024, the matter was adjourned for 07.05.2024 and on 07.05.2024, due to non-appearance of the petitioner, the learned trial Court issued non-bailable warrants of arrest against the petitioner for 03.07.2024. On 03.07.2024, on account of his absence, his bail was cancelled and the matter was adjourned for 08.10.2024. Thereafter, on 08.10.2024, 21.10.2024 & 16.11.2024 warrants of arrest of the petitioner was issued and on 28.11.2024, on account of receipt of report regarding non-bailable warrants as 'unexecuted', the learned trial Court initiated the proceedings under Section 82 of Cr.P.C. against the petitioner. On 08.01.2025 (Annexure P-12), the trial Court declared the petitioner as proclaimed offender. Aggrieved by the said impugned order dated 08.01.2025 (Annexure P-12), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the non-bailable warrants issued to the petitioner were never served as he was abroad and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Further, the trial Court vide order dated 28.11.2024 observed that since non-bailable warrants have not been executed till date, he cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C.. Ultimately, vide impugned order dated 08.01.2025 (Annexure P-12), the petitioner has been declared as proclaimed offender. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and



spirit by the trial Court.

4. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

5. Notice of motion.

6. Mr. Subhash Godara, Addl.A.G., Punjab, who is present in Court, accepts notice for the respondent-State 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 08.01.2025 (Annexure P-12) vide which the petitioner was declared as proclaimed offender, is hereby set aside.

12. 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 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.

13. 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.

14. 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

14.02.2025
Neha

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