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

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CRM-M-12289-2025 (O&M)

Date of decision: 05.03.2025

Rajwinder @ Rajvinder Singh**...Petitioner****Versus****State of Punjab and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Dinesh Nagar, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of order dated 02.08.2018 (Annexure P-3), passed by the Court of learned Judicial Magistrate First Class, Mohali in case titled as ***State vs. Rajwinder Singh***, arising out of FIR No. 0091 dated 16.05.2017, registered under Sections 406 and 420 of IPC and Section 24 of the Immigration Act at Police Station Phase-I, Mohali, whereby the petitioner had been declared a proclaimed offender.

2. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in the aforementioned case. Since the petitioner was lodged in jail in connection with some other case, he could not appear before the Court, which resulted into his being declared a proclaimed offender. Even otherwise, the petitioner had been declared a proclaimed offender without following the proper procedure prescribed under Section 82 of Cr.P.C. He is

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ready to join the proceedings before the learned trial Court. Hence, it is urged that the impugned order is liable to be set aside.

3. *Per contra*, learned Senior Deputy Advocate General, Punjab has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the learned trial Court. Therefore, he had been rightly declared a proclaimed offender. Hence, it is urged that the petition is liable to be dismissed.

4. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

5. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the learned trial Court from the date of initiating proceedings under Section 82 of Cr.P.C. as against the petitioner till the date of declaring him a proclaimed offender, I am of the considered opinion that the impugned order dated 02.08.2018 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

6. After going through the material placed on record, it is revealed from the statement of the serving police official ASI Tarsem Singh that the proclamation was executed on 05.05.2018 requiring the petitioner to cause appearance before the learned trial Court on 23.04.2018, which means that the petitioner was not granted mandatory period of 30 days to do so. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C., as per which, a specified time of not less than 30 days is required to be given to the accused from the date of publishing such proclamation which is mandatory in nature. Reliance in this regard can be placed upon *Gurappa Gugal and*

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others Vs. State of Mysore : 1969 CriLJ 826 and *Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339.*

7. A perusal of the statement of the serving police official further reveals that the proclamation was not read over in some conspicuous place of the town or village in which the petitioner was supposed to be residing. As per Section 82 (2) of Cr.P.C. for publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. Reliance in this regard can be placed upon *Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368.*

8. Accordingly, in view of the discussion as made above and also in view of the ratio of law as laid down in above cited authorities, the present petition is allowed and the impugned order dated 02.08.2018 (Annexure P-3), passed by the Court of learned Judicial Magistrate First Class, Mohali in case titled as *State vs. Rajwinder Singh*, arising out of FIR No. 0091 dated 16.05.2017, registered under Sections 406 and 420 of IPC and Section 24 of the Immigration Act at Police Station Phase-I, Mohali, whereby the petitioner had been declared a proclaimed offender, is quashed with all consequential proceedings arising therefrom.

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9. However, the petitioner is directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 482 of BNSS. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

10. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

11. Till the appearance of the petitioner before the learned trial Court, his arrest shall remain stayed.

12. It is made clear that in case the petitioner fails to appear before the learned trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

05.03.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No