



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

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**CRM-M-12031-2025
Decided on : 04.03.2025**

Gurpreet Singh Ghai and another

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**PRESENT:** Mr. Manoj Kumar, Advocate for the petitioner.

Mr. Amandeep Singh, DAG, Punjab.
(appeared on advance notice).

SANJAY VASHISTH, J. (Oral)

1. By way of present petition filed under Section 528 of BNSS, 2023, petitioner is seeking quashing of order dated 20.01.2025 (Annexure P-17), passed by learned Judicial Magistrate First Class, Ludhiana, in complaint No. COMA/7388/2022, whereby the petitioners have been declared as proclaimed persons.

2. Learned counsel for the petitioner *inter alia* contends that there being no notice or information to the petitioner, he could not join the proceedings in the complaint filed against him under Section 138 of the Negotiable Instruments Act. Resultantly, on account of non-appearance, learned Trial Court vide its order dated 20.01.2025, declared the petitioners as 'Proclaimed Persons'. For reference, same is reproduced herebelow:

*“ Present: Shri Y.K. Gandhi Adv. Counsel for the complainant
Both the accused declared as proclaimed persons.*

*Today case is fixed for awaiting presence of accused.
However, accused has not put up appearance in the court today.*

*Perusal of the file reveals that proclamation warrants
through publication U/s 82 Cr.P.C (now U/s 84 of The Bharatiya*



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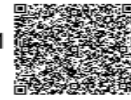
Nagarik Suraksha Sanhita 2023, (BNSS))has been effected on 30.09.2024 and placed on file. Statutory requirement us 82 of Cr.P.C.(now u/s 84 BNSS, 2023) stands duly complied with. Hence, both the accused are hereby declared as proclaimed persons. Necessary intimation in this regard be sent to the concerned police authority through concerned SHO/Commissioner of Police for making the relevant entry in the police record with a further direction to proceed against the accused under Section 174-A of Indian Penal Code 1860, (now u/s 209 of The Bharatiya Nyaya Sanhita, 2023) as per law. Ld. Counsel for the complainant has suffered a statement to the effect that affidavit Ex.CA along with documents Ex.C.1 to Ex.C.8 already tendered in evidence be read as statement under section 299 Cr.P.C. (now u/s 335 BNSS,2023) of the complainant and closed the evidence under section 299 Cr.P.C. (now u/s 335 BNSS,2023).

Ld. Counsel for the complainant has further suffered a statement to the effect that at present, complainant does not have any knowledge regarding movable or immovable property in the name of the accused for the purpose of attachment under section 83 Cr.P.C. (now u/s 85 BNSS, 2023). Therefore, proceedings under section 83 Cr.P.C. now u/s 85 BNSS, 2023) can not be initiated for the purpose of attachment. In view of the statement suffered by the Learned counsel for the complainant, file be consigned to the record room and be retrieved as and when the accused surrenders or is arrested/produced by the police.

*Pronounced in open court
Dated 20.01.2025*

*(Prabha Prashar) PCS
Judicial Magistrate 1st Class
Ludhiana.UID No.PB0500. ”*

3. By referring to the order dated 20.01.2025 passed in complaint case bearing No. COMA-7997-2021, titled as,’ **Kotak Mahindra Bank Vs. Gurpreet Singh Ghai**’, counsel also informs that deliberately, complainant did not serve notice upon the petitioner and had there been any such effort, very comfortably petitioner could be served the notice, because he(petitioner) had been appearing in the same Court in some other complaint also i.e. COMA-7997-2021. Therefore, there could not be any reason for the petitioner to avoid



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the appearance before the trial Court, once he is appearing in the other cases before the same Court. For reference, order dated 20.01.2025, is reproduced herebelow:

*“ Present: Sh. Yogesh K. Gandhi Adv. Counsel for the complainant
Accused on bail with counsel Sh. S.K. Pabbi Adv.*

File received by way of transfer. It be registered. Today case was fixed for filling reply to an application for substituting Mr. Shobit Malhotra, Assistant Manager/Authorized person of complainant bank in place of attorney. Accused present and recorded his statement that he has no objection if the application dated 16.10.2024 for substituting Mr. Shobit Malhotra be substituted in place of earlier attorney of complainant, subject to payment of heavy cost. Vide my separate order of even date, application in hand is allowed. Now to come up on 01.02.2025 for cross-examination of complainant.

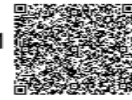
Date of order:20.01.2025

*(Jasleen Narang)
Judicial Magistrate-1st Class,
Ludhiana
UID No.PB0523”*

Learned counsel for the petitioner submits that petitioner is inclined to join the process of law before learned Trial court and undertakes to co-operate throughout the proceedings before the trial Court. Learned counsel further submits that the non-appearance of the petitioner before learned Trial Court was neither intentional nor a deliberate act, rather it was due to the reason explained and noticed hereinabove.

4. He further contends that, if one more opportunity is afforded to the petitioner to appear by granting some protection from arrest, he undertakes that in all the future proceedings of the present case, he would never be absent from the Court, except by obtaining prior permission from the Court, and thus will fully cooperate in the Court proceedings for early completion of trial.

5. Notice of motion.



6. On asking of the Court, Mr. Amandeep Singh, DAG, Punjab, who is present in Court, accepts notice on behalf of the respondent-State.

A copy of the complete paper book has been supplied to him by learned counsel for the petitioner.

7. Learned State counsel opposes the request of the petitioner, and submits that petitioner has willfully remained absent from the proceedings of learned Trial Court and thus, does not deserve any sympathy. Therefore, petitioner should be directed to surrender before the Court and to face trial.

8. I have heard learned counsel for the parties and perused the relevant material on record. It is evident that petitioner is inclined to join the process of law, and by way of present petition, he is seeking one chance to join the proceedings before the learned Trial Court, by abiding to the terms and conditions.

9. In number of cases, wherein, accused stopped appearing in criminal cases, the Courts are compelled to declare accused as 'Proclaimed Person/Proclaimed Offender'. After examining the facts, this Court has formulated a uniform method to ensure the presence of accused before the concerned Court, to enable it to proceed further instead of delaying the proceedings by awaiting the presence of accused.

Intentional or unintentional default of the accused can be dealt with by examining the facts from case to case involved, and where it is realized that absence or prolonged absence of such accused is intentional to evade the process of law, he/she can be penalized examining the nature of crime in which he is facing the proceedings and thereupon by imposing some cost amount subject to his/her capacity to pay.

Primary object of every Court is only to examine the commission of



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crime in question before it *vis a vis* the person/accused, who is subjected to such proceedings, and if possible justice be imparted at the earliest without unnecessary delay. It is not expected that undue time would be devoted in securing the presence of absconded accused and also to waste energy by enforcing the special mechanism to arrest such accused.

Considering all such aspects, this Court in the case of ***Ashish Kumar Honda @ Ashish Handa Vs. State of Punjab, 2022 (4) RCR (criminal) 765; Law Finder Doc Id # 20238111*** considered similar plea of appearance, expressed at the instance of the accused, who failed to appear before the Court at appropriate time, and observed that:

“paramount consideration of the Court is to secure presence of accused on each and every date for speeding up the trial for its final conclusion. Already Courts are flooded with so much litigation, resulting in slow pace of work, because of more than one reason. The required energy and manpower be used for expediting the proceedings of the Court, instead of running after the accused persons to get hold of them.”

Again, this Court has considered the aforementioned similar plea in case ***Veena @ Veena Devi v. State of Punjab (CRM-M-2206-2025, decided on 16.01.2025)***.

10. In totality of circumstances, I am of the view that the petitioner can be given one chance to appear before the trial Court, so that proceedings may restart and continue in smooth manner. Accordingly, plea of the petitioner is accepted. Impugned order dated 20.01.2025(Annexure P-17) is set aside to the extent of declaring the petitioner as ‘proclaimed person’, and he is directed to be released on bail, in the eventuality of surrender by him before the trial Court on or before 17.03.2025.

11. Petitioners shall also furnish fresh bail bonds/surety bonds to the satisfaction of the trial Court. Besides, petitioners would also submit

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specific undertaking/affidavit that he will keep appearing during the proceedings of the trial in future and the proceedings would not be delayed because of his conduct.

12. However, this order shall be subject to the payment of Rs.10,000/- (Rupees ten thousand only) as costs, to be deposited by the petitioners in an Old Age Home of the area, as may be decided by the learned Trial Court. The Trial Court shall also specify the time frame within which such costs will be required to be deposited, but not more than two weeks, failing which this order would not be of any advantage to the petitioner.

13. With aforementioned terms, present petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

March 04, 2025*rashmi**Whether speaking/reasoned: Yes/No**Whether Reportable: Yes/No*